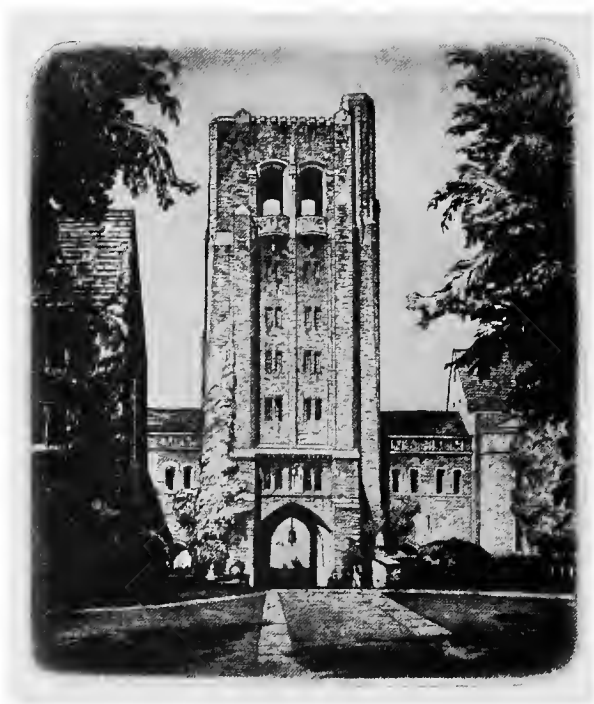


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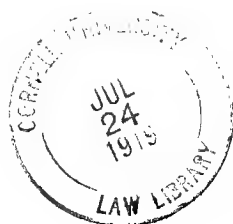
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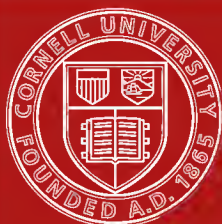
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CLARK ON INTERSTATE COMMERCE

TESTIMONY

GIVEN BEFORE THE

Senate Committee on Interstate Commerce

BY

EDGAR E. CLARK

A Member of the Interstate Commerce Commission

WITH

INTRODUCTION

BY

FRANCIS B. JAMES

Chairman of the Committee on
Commerce, Trade and Commercial Law
of the American Bar Association

1919

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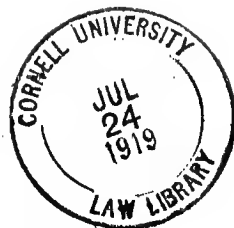


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INTRODUCTION

PRELIMINARY.

The world conflict has come and gone, and during that trying period the United States Government, as a war measure, has largely conducted the country's transportation. The actual experiment of Government operation has generally crystallized public sentiment against it as a permanent policy, and against its continuation for even five years after a formal proclamation of peace.

The period of thirty-two years since the approval by the President on February 4, 1887, of the Act to Regulate Commerce, has been rich in experience, and has demonstrated that in view of both old and new economic conditions, amendatory and supplemental legislation should be enacted before the return of interstate common carriers to private ownership and operation.

Many plans have been submitted to the Senate Committee on Interstate Commerce by both the biased and unbiased, the leading among the former being the Association of Railway Executives and the National Association of Owners of Railway Securities, and the chief among the latter being Hon. Edgar E. Clark, a member of the Interstate Commerce Commission for a dozen years past. His testimony is so disinterested and the fruit of so long an experience that it comes more nearly to being a guide for future legislation than that of any

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other witness. The insinuation contained in the questions put by a former Senator from Illinois (pages 210-211)* instead of weakening has only added weight to Mr. Clark's statements.

THE KEYNOTE.

One note that rings sharp and clear throughout Mr. Clark's testimony as to transportation (and which is resounding throughout the economic world as to all other economic activities) is that both coöperation and consolidation on the one hand and competition on the other must be limited, controlled and regulated in order that the good of each shall be preserved and the bad destroyed. Unregulated, uncontrolled and unlimited coöperation and consolidation are harmful to the public weal, while controlled, regulated and limited coöperation and consolidation are in the public interest. Uncontrolled, unregulated and unlimited competition of itself tends toward either monopoly or bankruptcy and is wasteful and not for the general welfare, while controlled, regulated and limited competition is economically sound and to the benefit of the whole social fabric including therein the economic element. This appears from the following colloquy, pp. 56-57:

“Senator WATSON. * * * Mr. Commissioner, as I understand the report of the Commission, you are in favor of the elimination of all competition; is that right?

*Page references are to pages of this volume wherein is given Mr. Clark's testimony.

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“Commissioner CLARK. Except the competition of service.

“Senator WATSON. How do you distinguish between ‘competition of service’ and other kinds of competition if you would have the railroads operated as a unified whole?

“Commissioner CLARK. Our suggestion is not so complete a unification as exists at the present moment. *Our suggestion is for the elimination of unnecessary and wasteful competition* (italics mine*); and, speaking only illustratively, it has not been my thought at all that if the Commission were endowed with the power that is here suggested it exercise it to the extent, for example, of permitting consolidation or merger of the New York Central system and the Pennsylvania Railroad system; but there may be a good many small roads between them, connecting with one or the other of them, which it would be in the public interest to have one or the other of them absorb and make it part of a big healthy member of society.

“Senator KELLOGG. I do not understand that you believe that all competition as to service between the great carrier lines of this country should be eliminated?

“Commissioner CLARK. Not at all, Senator.

*The term “italics mine” means that the italics are those of the undersigned.

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“Senator WATSON. No.”†

A NEW JURISPRUDENCE.

A New Jurisprudence has grown up in America under which right and justice have been sanely, quickly, and cheaply meted out through modern administrative tribunals—and it has been the highly successful work of the Interstate Commerce Commission that has pointed the way. The Panama Canal Act, the Federal Trade Commission Act, the Clayton Act, the 1916 Amendment to the Federal Reserve Act, the Shipping Board Act, and the Webb-Pomerene Act have followed in its wake.

The time has come when society recognizes that reasonable coöperation and consolidation, and rational competition can be brought about by being limited, regulated and controlled by duly established administrative bodies. Neither reasonable coöperation and consolidation nor rational competition should be destroyed by hard and fast rules of law whose principal sanctions are grand and petit juries and penal institutions.

EXTENT OF REGULATION.

“Government regulation of corporations engaged as common carriers,” says Mr. Clark (p. 4), “should reach

†The formal memorandum submitted by Mr. Clark on behalf of the entire Commission except Mr. Commissioner Woolley (p. 11), stated: “Obviously competition between carriers that is wasteful or unnecessarily expensive lays an added burden upon the rate payers. Elimination of wasteful or unduly expensive competition in rates or services is desirable.” The colloquy quoted in the text (in that it deals with both undue consolidation and unreasonable competition) is more helpful in guiding economic thought than the matter quoted in this footnote, although the latter very aptly supplements the former.

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the corporate activities wherever those activities may lawfully go in serving the public as interstate carriers.”

COMPLETE MERGER IN TIME OF WAR.

Mr. Clark wisely suggests that Congress should now (pp. 4-5) provide by law for the prompt merger of all carriers' lines, facilities and organizations into a continental and unified system in time of war under which the President should be authorized to assume possession and control and operate same. It is suggested by the undersigned that such law provide that in exercising such power the President should do so through the existing corporate organizations as his agencies.

Mr. Clark goes still further and suggests (pp. 4-5) the giving of such power in times of national stress or emergency not growing out of war. The wisdom of this suggestion is open to the gravest question.

UNNECESSARY ROAD BUILDING.

Interstate railroads should only be constructed when necessary and convenient to the public and Mr. Clark points out (p. 6) that a certificate of “public convenience and necessity” be first secured.

POWER TO REQUIRE RAILROADS TO EXTEND THEIR LINES.

The new legislation (says Mr. Clark) should give the Interstate Commerce Commission power to require common carriers to extend short lines, spur lines and spur tracks to communities and industries under reasonable limitations (p. 7).

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FAIR WAGES A PROPER FACTOR IN RATE MAKING.

That fair wages to be paid labor is conducive to efficiency and a proper factor in rate making is lucidly expounded by Mr. Clark (p. 10).

WAGES AND CONDITIONS OF EMPLOYMENT.

Mr. Clark expressed the opinion (p. 23) that the Interstate Commerce Commission should not be vested with power to adjudicate questions of wages and conditions of employment but that the Newlands Act is adequate to deal with these questions.

UNIFORM DEPRECIATION CHARGE.

Mr. Clark (pp. 24-25) demonstrated that there could not be a uniform depreciation charge because to have such uniform depreciation charge would disregard divergent operating conditions and that the present law is adequate to deal with the question.

MILEAGE SCALES AND GROUPING.

Rate making is not a purely mathematical problem but a commercial one in which economic factors must be considered. Mere mathematical rate making is not of itself scientific rate making and no rate making is truly scientific which does not consider the actual affairs of commercial life. It is true there are situations and conditions where mathematical rate making is sound economic rate making. Every true student of the subject should read with the greatest care what Mr. Clark had to say (pp. 26-28) on the subject of grouping in his testimony before the Senate committee.

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INITIATING RATES.

The general power to initiate rates should be left with the carriers. Experience shows that the Commission should also be given power to initiate rates.

WAR EXPENSES.

The extraordinary cost of conducting the railroads by the Government during the war period for war purposes, including the abnormal prices paid for additions and betterments made for war purposes should be paid out of the public treasury and should not be saddled on the carriers, to be in turn borne by the shipper. The new law should expressly provide that the railroad should not be bound by the unconscionable contract forced upon the railroads by the administration, and that the carriers be bound only to the extent of the normal value of such additions and betterments. This thought is expressed in a dialogue between Senator Cummins and Mr. Clark (pp. 118-119), as follows:

“Commissioner CLARK. And whatever course is adopted, I do not believe that the Government will ever come out of this thing with enough earnings from these railroads to pay the obligations which the Government must meet as the result of its taking them over.

“Senator CUMMINS. I agree that if the Government operates the roads, for any inefficiency or want of economy that may be found in that operation, I suppose the shippers will have to pay for it; but the roads being op-

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erated for war purposes, if they do not earn the income that is necessary to make good the guaranty, it ought to be paid out of the treasury and not extorted from the shippers of the country, ought it not?

“Commissioner CLARK. Under those circumstances, it seems to me a very proper part of our war expenses.

“Senator CUMMINS. And it is not likely that the Interstate Commerce Commission would adjust rates so that deficits which were occasioned by war movements would be taken from or made up by the shippers, is it?

“Commissioner CLARK. We have never adjusted rates on any such principle.”

It would appear to have been the clear intent and purpose of the Railroad Control Act of March 21, 1918 (40 Stat. 451) by the provisions of sections 1, 3, 4 and paragraphs 2 and 3 of section 6, that the war-time cost of additions and betterments made necessary by war-time conditions should not be saddled upon the railroads but only the cost in normal times. The Railroad Administration seems to have sought to frustrate the obvious intent and purpose of the law by providing in paragraph (b) of section 8 of Forms “A” and “B” of April 5, 1919, of the agreement between the Director General of Railroads and the Railroad Companies, the following: “*Provided, however, That no loss shall be claimed by the company* and no money shall be due to it† in respect of such additions*

*“Companies” in form “B.”

†“Them” in form “B.”

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and betterments upon the ground that the actual cost thereof at the time of construction was greater than under other market and commercial conditions and for the purpose of determining such controversy the amount paid for any addition or betterment shall be deemed the fair and reasonable cost thereof and shall be taken as the basis for such determination."

MERGER OF CARRIER LINES.

The second primary thought expressed by Mr. Clark on behalf of the entire Commission except Mr. Woolley, is as follows (pp. 5-6): "Merger within proper limits of the carriers' lines and facilities in such parts and to such extent as may be necessary in the general public interest to meet the reasonable demands of our domestic and foreign commerce. The thought underlying this is that it might become necessary or be found desirable in the general public interest to permit, encourage or require carriers within limits as to extent, territory and time to merge their lines and facilities or the operation thereof. The exercise of such a power would necessarily be an administrative function."

This presents two questions, one as to permissive and the other as to compulsive merger.

As to permissive merger four classes of cases present themselves:

(a) The substantially non-paralleling and, therefore, non-competing lines whose consolidation would form a continuous line;

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(*b*) The feeding lines originating traffic (p. 94) lateral to the trunk lines and, therefore, non-competing;

(*c*) The short lines wholly or partially competing, whether originating traffic or not;

(*d*) The more or less paralleling and, therefore, competing trunk lines.

As illustrating class (*a*) would be the merger of the New Haven with the Pennsylvania, as pointed out by Mr. Clark (pp. 83-84); or a system extending from the Atlantic to the Pacific or from the Great Lakes to the Gulf (p. 58).

A merger of class (*b*) and class (*c*) with each other or with a trunk line as shown by Mr. Clark (pp. 29-31, 56 and 58), would be proper and the Sherman anti-trust law and the Clayton act should be modified accordingly (p. 31), so as not to cover such cases as are approved by the Commission.

The new law should permit the consolidation of the foregoing classes (*a*), (*b*) and (*c*) when found by the Interstate Commerce Commission to be in the public interest and what has just been said as to the Sherman anti-trust law and Clayton act is applicable thereto.

At this point, however, the line should be sharply drawn and the new law should specifically state that no merger or consolidation by sale, lease, stock ownership, community of interest or otherwise should be permitted as to class (*d*) roads. As an illustration Mr. Clark pointed out (pp. 56 and 94) that a merger of the New

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York Central system and the Pennsylvania system should not be permitted.

Mr. Clark presents (pp. 57-58) strong disapproval of any regional subdivision of the country or regional merger or consolidation of lines. Senator Gore expressed the opinion (at p. 58) that such regional systems would be artificial, reverse the law of progress and tend toward disintegration rather than integration.

The new law should not only be permissive and encourage such mergers with limitations strongly and clearly expressed against the merger of substantially paralleling and competing trunk lines in said class (*d*), but should provide for such compulsory merger of said class (*a*), (*b*) and (*c*) lines within the constitutional limits of due process of law when found by the Interstate Commerce Commission to be in the public interest.

Senator Underwood (pp. 93-94) seems to have thrown some confusion into the discussion as to compulsory merger. There was some saving grace in the statement of Mr. Clark (pp. 96-97) that permissive merger be refused unless a willing short line be included in such merger.

COMMON USE OF EQUIPMENT.

The law now provides for the interchange of equipment in the case of through routes and to be reasonable should be on a car for car basis with an appropriate per diem. Each carrier in a through route should furnish and be compelled to furnish its proportional part of such equip-

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ment. (Mr. Clark suggests (p. 15) the pooling of equipment. The pooling of equipment is but another name for the common use of equipment. The pooling of box cars would seem to be appropriate but the law should place close limitations on the pooling of open top cars and possibly of other forms of equipment. Not only should carriers be permitted to pool box cars, but when in the public interest compelled to do so. If it is thought wise to extend the pooling authority to cars other than box cars there should not only be permissive pooling but compulsory pooling when found in the interest of the public by the Interstate Commerce Commission.

The new law should not merely permit the Commission to require carriers to make car service rules a part of their tariff publications but the law should make same mandatory.

OBLIGATION TO FURNISH EQUIPMENT.

The Interstate Commerce Commission to-day is without power to require a carrier to provide equipment (p. 15.) The new law should authorize the Interstate Commerce Commission to require a carrier to provide and furnish equipment both as to quantity and kind—both general and special.

THE PRIVATE FREIGHT CAR.

Mr. Clark points out that there should be limitations on the right of a shipper to supply a private freight car (p. 15). The new law should contain detailed rules on

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this subject. The private car owners secure special assignments of their private cars and thus secure preferential use of locomotives, road bed and terminals over other competitors who do not own private cars.

MOTIVE POWER.

The new law should give the Commission power to require carriers to furnish ample motive power.

STANDARDIZATION OF EQUIPMENT AND MOTIVE POWER.

If the new law gives the Interstate Commerce Commission (p. 15) power over the standardization of equipment, the undersigned suggests it should be somewhat limited, and so far as cars are concerned the standardization should be confined to box cars. It is very doubtful whether it should be extended generally to locomotives because the local conditions are so dissimilar that a locomotive of one standard of high efficiency in one locality would be of low efficiency in another locality.

THE COMMON USE OF TERMINALS.

As to common use of terminals Mr. Clark said (p. 15): "A more liberal use of terminal facilities in the interest of proper movement of commerce. Here again a broad revision of the limitations upon coöperative activities among the carriers would naturally bring a more liberal use of the existing terminal facilities and would undoubtedly bring about agreements between competing carriers under which existing terminal facilities would be opened to traffic which is now and heretofore has been

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excluded. If the regulating body is empowered to require adequate service it could require the enlargement of terminals, if that action were necessary in the public interest, and could require that terminals be opened to traffic in so far as is reasonably and properly in the interests of the commerce of the locality. Where this power was exercised, the regulating tribunal would, as a matter of course, determine the reasonable compensation to be paid to the owning carrier for the use of its property by the carriers or traffic so using that property."

The opinion of Mr. Justice Lurton in the St. Louis Terminal Case (224 U. S. 383) is an interesting study of the problem and of the question of competition in service (at p. 393).

The carrier should not merely be permitted to agree to the use of terminals in common, but the Commission should be authorized by express provision of law to require common use of terminals and require the building of new and the enlargement of old terminals.

SUPERVISION OF SERVICE AND PHYSICAL OPERATION.

That the Interstate Commerce Commission must be given full, ample and complete authority over service and physical operation of carriers, is most forcefully stated by Mr. Clark (pp. 14, 54, 55, 96, 177-181). This is by far one of the most important new powers that should be conferred on the Interstate Commerce Commission. The

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shippers should not fail to see that Congress confers this power in the most ample and complete form possible.

MINIMUM RATES.

Mr. Clark argues most convincingly in favor of vesting in the Interstate Commerce Commission power to prescribe not merely maximum but minimum rates (pp. 11, 198, 214) and shows that it would thus be placed beyond the power of a carrier to upset a reasonable rate adjustment (p. 12) or kill or keep killed water transportation (pp. 7-8).

Of course this power should be limited so as not to prevent a carrier from developing traffic, a function pointed out by Hadley (*Railroad Transportation*, p. 17) as the most important in American railroading.

ISSUE OF SECURITIES.

Mr. Clark has demonstrated (p. 12) that there must be an "emancipation of railway operation from financial dictation." This can be accomplished by vesting in the Interstate Commerce Commission power to "regulate" the issue, sale, pledge and disposition of securities (pp. 161-162). As put by Senator Pomerene (p. 87) and concurred in by Mr. Clark (p. 87) to stop the railroad financial poker game.

CONTROL OF EXPENDITURES.

The full significance of Mr. Clark's suggestion that the new law should provide that the Commission should have control over expenditures and funds and that the same

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should not be diverted can not in justice be epitomized and should be read in full (Mr. Clark, pp. 34-39, 161-162).

INTERLOCKING DIRECTORS.

Mr. Clark suggests (p. 13) that the provisions of the Clayton act be extended as to common or interlocking directors, whether the carrier corporations are or are not competitors.

ADEQUATE REVENUE.

Adequate revenue is necessary for efficient service (p. 16). Mr. Clark (pp. 16-17) has expounded this subject with wonderful clearness. Adequate revenue, however, to operate a railroad as an instrument of transportation is quite different from the raising of revenue to pay interest or dividends on capitalization which capitalization is not entitled to interest or dividends (Mr. Clark, p. 44) or to pay rental on leases whose terms shock the conscience.

POOLING OF FREIGHT AND DIVISION OF EARNINGS.

The pooling of physical equipment, such as box cars, is proper. The pooling of freight and a division of earnings based thereon is fraught with danger. Pooling of freight with a division of earnings is unlike a merger. Pooling of freight with a division of earnings entirely ignores capital. A pooling of freight with a division of earnings is not a consolidation of all the activities of a carrier, while on the contrary a merger is a consolidation of each and all the activities of the carriers involved. A

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pooling of freight with a division of earnings is a hybrid—neither flesh nor fowl. A pooling of freight with a division of earnings means either no competition or service or unreasonable, abnormal and excessive competition in order to make a showing for a subsequent division of earnings.

Congress, by Section 5 of the Act to Regulate Commerce, provided as follows: "That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof." Congress thereby tore up the pooling of freight and a division of earnings therefrom by the roots and branches and what was wise then is wise to-day.

The memorandum submitted on behalf of the entire Interstate Commerce Commission, except Mr. Woolley, does not specifically or by name cover the subject of pooling of freight and division of earnings based thereon.

The following dialogue between Senator Poindexter and Mr. Clark should be the subject of careful study (pp. 43-44):

"Senator POINDEXTER. Why could they not be required, under the power of the Congress, to regulate interstate commerce, to pool their earnings and divide them?

"Commissioner CLARK. Senator, that would be a part

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of and covered by the suggestion which we have made here of the revision of the limitations upon the competitive activities of the carriers. Our suggestion is that not only ought there to be opportunity to absorb into the larger systems the poor and weak railroads that are unable to furnish the right kind of service, and unable to further finance themselves, but that there should be a wiping out of the limitations upon the consolidation or unification of the carriers' competitive facilities and lines, to such extent as may be approved by the designated Federal authority after full investigation and public hearing, so that everybody may know what the proposition is; so that everybody may know what is said in support of it; so that everybody may know what objections, if any, are advanced; and a report of that tribunal or authority, whatever it was, on the subject would state to the public what ought to be done, and why it ought to be done, and there would be no public interest injured that we can see.

“Senator POINDEXTER. That would remove the difficulty you have just mentioned, of having to make the rate for both lines, so that the more expensive one should earn a dividend?

“Commissioner CLARK. Well, I did not go so far as to suggest that the more expensive one should earn dividends because there are some of them that never can earn dividends on their present capital under any rate that would be considered.

“Senator POINDEXTER. What is your solution of the

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problem you have just mentioned, where the rate would be profitable to one road and not profitable to the other?

“Commissioner CLARK. A rate that would give them a reasonable return on the property that they devote to the public service.

“Senator UNDERWOOD. If you had the power to fix the rate—not a rate that would be reasonable so far as the specific charge on a ton of pig iron or a basket of feathers is concerned, but a reasonable rate that would yield a fair return on the investment in the property actually devoted to the public service—the commission would discriminate as to how much of that capital investment was fictitious and how much of it was real?

“Senator CLARK. Yes.”

The following colloquy appears in the report of the hearings before the Senate committee (at p. 31):

“Senator GORE. The interstate-commerce act prohibits pooling. Do you not think that act should be modified so that roads which do not merge or consolidate may be permitted to enter into reasonable pooling arrangements?

“Commissioner CLARK. What I have said would go to that proposition also.”

Mr. Clark has clearly pronounced himself against the consolidation of trunk lines such as the New York Central and Pennsylvania lines, and in favor of pooling of cars. Answers to leading questions such as those put by Senator Gore must be carefully weighed. This answer by Mr.

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Clark to this leading question by Senator Gore is not to be taken as the final word upon the subject of pooling of freight and division of earnings. It is neither merger nor consolidation. It is a most dangerous form of arrangement and does not carry with it the benefits of a real merger or consolidation when each and every activity, financial, operating and traffic are indissolvably bound together and interrelated to and dependent upon each other.

COMPETITIVE AND NON-COMPETITIVE TRAFFIC.

“There would seem to be no occasion for different charges, terminal or otherwise,” said Mr. Clark (p. 14), “as between so-called competitive and so-called non-competitive traffic,” if proper limitations are observed.

TRANSIT.

Within the limitations suggested, Mr. Clark says (p. 14) there would be no occasion “for many of the old annoying and expensive restrictions surrounding milling and other services in transit.” The transit practice tends to diffusion of industry as pointed out by Mr. Commissioner Meyer in the Fabrication-in-Transit case (29 I. C. C. R. 70, at p. 76) and is in the public interest as pointed out by Mr. Commissioner Prouty in the Floating Cotton case (8 I. C. C. R. 121, at p. 133), and the law should be amended so that transit practices may be widely extended to many new subjects not yet sanctioned by the Interstate Commerce Commission.

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RAIL AND WATER.

Mr. Clark spoke most eloquently (pp. 7-8 and 58) in favor of the development and encouragement of inland water ways and coördination and articulation (by inference) of rail and water transportation systems. Abnormally low rail rates have been published in the past for the avowed purpose of killing water traffic and the law now unwisely provides a method of eternal sleep for such water transportation. This should be repealed and the Commission given power to prescribe minimum rates (p. 8), and thus take a deadly weapon out of the hands of the rail carriers. In addition to mandatory provisions for joint through rates and divisions thereof, mandatory provisions should be enacted for proportional or ex-water rates applicable to traffic coming from or going to the water ways, whether such traffic comes from or goes to a water common carrier or a water private carrier, because nearly all the heavy bulk traffic such as coal is carried on the inland water ways by private carriers.

ROUTING.

Mr. Clark's criticism (pp. 31-32) of absolutely free routing is well taken. Section 15 of the Act to Regulate Commerce, as amended, gave the commission power to prescribe exceptions and regulations as to free shippers' routing in one breath, and took it away in the next breath as to routing when there is competition over any part of a through route. As the great bulk of traffic does move over lines where at least a part of the route is competitive

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the right to make exceptions and regulations is nullified. The proviso should be repealed and the Interstate Commerce Commission should be given full power to prescribe exceptions and regulations as to routing whether over competitive or non-competitive routes either in whole or in part.

FEDERAL AND STATE COMMISSIONS.

Just as the American people have accepted the principle of an indestructible Union of indestructible States, so the shipping public is demanding an indestructible Interstate Commerce Commission to regulate our national commerce and indestructible State commissions to regulate our purely local State commerce. We must neither localize our national commerce by regional mergers or regional commissioners nor nationalize our local commerce by undue interference with State regulation of State local intrastate commerce by the Interstate Commerce Commission. Senator Kellogg (at p. 159) asked Mr. Clark, "is it not true that very few rate adjustments can be localized," and Mr. Clark answered, "it is true." Neither one nor the other should unduly discriminate against the other. There should be enacted into law in express, unmistakable written words the principle of the Shreveport case (pp. 166-167) and what was said at an earlier date in the case of *Welton v. Missouri* (91 U. S. 275, Mr. Justice Field at p. 282). There is no real difficulty in harmonizing both and establishing a proper relationship between them (pp. 13-14).

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THE SO-CALLED WEAK ROADS.

There has been created an atmosphere of hysteria as to the so-called weak roads, largely the result of the activities of such organizations as the Association of Owners of Railroad Securities. These so-called weak roads have been placed, as it were, in an economic *aéroplane*, "up in the air," to remove them from close observation. They must be brought back "to earth" for closer scrutiny. They must be released from the darkened ward wherein are placed sick economic patients and brought back into the economic sunlight for practical common sense treatment.

The long and loud talk about the so-called weak roads has had a psychological effect upon the masses until some of the public have lost their balance and acquired delusions, illusions and hallucinations in respect thereto. The representatives of holders of securities in the so-called weak roads have shed tears so copiously that emotionalism has made the world also weep briny drops. There has been a regular economic camp-meeting where boisterous shouting has taken the place of calm deliberation.

The so-called weak roads problem has merits and demerits. Some phases of the problem are to be solved by gentle means and others by the most drastic.

Mr. Clark shows (pp. 36-37) why we have so-called weak roads, as follows: "No railroad has, in my judgment, ever been embarrassed financially if the proceeds from the sale of its stocks and bonds have been devoted

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to the development of the property. It is the diversion of the proceeds of these securities to other channels that leaves the railroad with a burden of debt that it can not carry." Mr. Clark pointed out (p. 85) a few roads such as the Rock Island, Frisco, C., H. & D., Pere Marquette, Wabash & Pittsburg Terminal, and (p. 84) the New Haven.

Mr. Clark also stated (p. 44) that: "Well, I did not go so far as to suggest that the more expensive one should earn dividends, because there are some of them that never can earn dividends on the present capital under any rate that would be considered." The same thought had been expressed by the Supreme Court of the United States in the case of *Covington Turnpike Co. v. Sanford* (164 U. S. 578). In this case, Mr. Justice Field said (pp. 596-7): "It can not be said that a corporation is entitled, as of right, and without reference to the interests of the public, to realize a given per cent. upon its capital stock. When the question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders. But that involves an inquiry as to what is reasonable and just for the public. If the establishing of new lines of transportation should cause a

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diminution in the number of those who need to use a turnpike road, and, consequently a diminution in the tolls collected, that is not, in itself, a sufficient reason why the corporation, operating the road, should be allowed to maintain rates that would be unjust to those who must or do use its property. The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. The legislature has the authority, in every case, where its power has not been restrained by contract, to proceed upon the ground that the public may not rightfully be required to submit to unreasonable exactions for the use of a public highway established and maintained under legislative authority. If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public. So that the right of the public to use the defendant's turnpike upon payment of such tolls as in view of the nature and value of the service rendered by the company are reasonable, is an element in the general inquiry whether the rates established by law are unjust and unreasonable. That inquiry also involves other considerations, such, for instance, as the reasonable cost of maintaining the road in good condition for public use, and the amount that may have been really and necessarily invested in the enterprise. In short, each case must depend upon its special facts, and when a court, without assuming itself to pre-

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scribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway, are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law.”

That Senator Underwood had similar ideas in mind is shown by the following colloquy (p. 34):

“Senator UNDERWOOD. * * * If the capitalization is based on watered stock or fictitious issues of securities then there is a danger to the property which is unnecessary.

“Commissioner CLARK. Undoubtedly.”

Mr. McCrea, president of the Pennsylvania Railroad, in his evidence before the Interstate Commerce Commission In the Matter of Proposed Advance in Freight Rates by Carriers (Ten Per Cent. case) of 1910,* testified (pp. 2324-25, Senate Document No. 725, 61st Congress, 3d Session), as follows:

“Mr. ARWOOD. Would you think it right for this Commission by its order to fix rates and say that as to those

*20 I. C. C. R. 243 and 307.

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rates they would tax the shipping community, to the end that there might be upheld and maintained a railroad that might be in need as the result of maladministration and overcapitalization?

“Mr. McCREA. I certainly do not. I think that a road for which there never was any urgent need, which was not properly financed, which was not conservatively managed—I do not think that that road should have any more consideration than the results of its operation would justify.”

Mr. Clark has pointed out (pp. 36-37) with wonderful clearness the disaster resulting from the diversion of the proceeds of issued capital and has suggested (p. 36) a remedy by a supervision of expenditures.

Every person at all familiar with the transportation problem should bear in mind the many cases of disaster resulting from unwise and imprudent issue and diversion of securities and the proceeds thereof and allowing merger and consolidation to run wild and the making of unconscionable leases and guaranteeing securities where such guarantee should not have been given.

In Consolidations and Combinations of Carriers (July 11, 1907), 12 I. C. C. 277, the Commission stated (at pp. 300-301): “Taking the original cost of the property as it stood upon the books of the Alton Company December 31, 1898, as \$39,935,887, adding the amount which appears by the testimony of Mr. Harriman, Mr. Felton, and Mr. Hillard to have been spent upon the property out of

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the new capital issued after Mr. Harriman and his associates obtained control of the road, to wit, about \$18,000,000 (including the cost of the fifty-eight miles of the Peoria road at \$3,000,000), it shows that the foregoing liabilities of over \$113,894,000 were placed upon property which had originally cost approximately fifty-eight millions, or an increase of stock and liabilities upon the road for which not a dollar of tangible property had been added of practically \$56,000,000.

“It was admitted by Mr. Harriman that there was about sixty millions of stock and liabilities issued against which no property had been acquired, and this is undoubtedly an accurate estimate. It further appears by the testimony of Mr. Hillard that since the Harriman control has ended and the road was turned over to the Rock Island the company has been compelled to issue \$2,260,000 of car trust notes to acquire equipment needed in the business of the company; that the present management found the company without any money to buy necessary equipment or to build thirty-four miles of railroad which the company had contemplated constructing and on which the Harriman management had placed a mortgage, sold the bonds, but had left no funds in the treasury to complete.

“From this brief synopsis of the exploitation of the Chicago & Alton, it is evident that its history is rich in illustrations of various methods of indefensible financing. First came the profit to the stockholders arising out of

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the sale to themselves of \$32,000,000 of bonds at 65, which sold for several succeeding years for $82\frac{1}{8}$ to 94. Second came the 30 per cent. dividend based on amounts expended from income for improvements, much of it nearly thirty years before, and recently capitalized. Third came the psuedo transfer to Stanton, and his contract under which the new company paid \$10,000,000 in cash for preferred stock which had cost less than \$7,000,000. Fourth came the conversion of 183,224 shares of common stock in the *Railroad* Company into 195,428 shares of common stock plus 194,890 shares of the preferred stock in the *Railway* Company, part of which was sold to the Union Pacific at $86\frac{1}{2}$ a share. Fifth came the sale of the St. Louis, Peoria & Northern for \$3,000,000 cash. Sixth came whatever interest the syndicate may have had in the sale of Kuhn, Loeb & Co., of \$22,000,000 of bonds at 60 cents on the dollar. Seventh came the fee of \$100,000 to Mr. Harriman for financing the enterprise. This analysis is no doubt incomplete, but it is suggestive.

“By way of justification or excuse we are told that the methods of the financing of railroads which prevailed in the year 1900 are now obsolete, owing to a higher degree of conscientiousness among financiers; and moreover, that the Chicago & Alton should not be regarded as an isolated instance, inasmuch as it was dealt with much as many other roads were at that period.

“The first of these statements is, we trust, true; the

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later statement is not calculated to uphold the value of American railroad securities.”

In the New England Investigation (June 20, 1913), 27 I. C. C. 560, the commission stated (at page 578): “June 30, 1903, the total capitalization of the New Haven Company was approximately \$93,000,000, of which \$79,000,000 was stock and \$14,000,000 was bonds. The mileage then operated was 2,040 miles. On June 30, 1912, the capitalization, including stock premiums, was \$417,000,000, an increase of \$324,000,000 while the operated mileage was 2,090, an increase of fifty miles.

“The bonds and notes of the New Haven Company had been during this period ordinarily issued at not less than par; the stock was sold at considerably above par. About \$21,000,000 of the stock reported by the New Haven Company as outstanding had been in fact issued to the New England Navigation Company, one of its subsidiary companies, by which it was held, so that this stock is still virtually in the treasury of the parent company. Disregarding this stock, treating its notes and bonds as issued at par, and including the premiums upon the capital stock which has actually gone into the hands of the public, the New Haven received during the nine years under consideration from the issue of stock and securities about \$340,000,000.

“While the New Haven operated 2,040 miles in 1903, it only owned of this operated mileage 438 miles. During the nine years this owned mileage was increased by about

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800 miles, and the New Haven Company expended approximately \$40,000,000 in acquiring this additional owned mileage.

“It expended during the nine years something over \$96,000,000 upon its railroad for betterments and equipment, making a total of \$136,000,000 devoted to its railroad property proper.

“This would leave the sum of \$204,000,000, which in nine years had been expended in operations outside its railroad sphere. This fact of itself is a most significant one which, standing alone, might well require explanation. Attention is here directed to some of the purposes for which and the manner in which this vast sum has been invested.” The Commission further stated (at pages 616-617): “In conclusion this commission desires to call attention to one lesson from this investigation of national application.

“No student of the railroad problem can doubt that a most prolific source of financial disaster and complication to railroads in the past has been the desire and ability of railroad managers to engage in enterprises outside the legitimate operation of their railroads, especially by the acquisition of other railroads and their securities. The evil which results, first, to the investing public, and finally, to the general public, can not be corrected after the transaction has taken place; it can be easily and effectively prohibited. In our opinion the following propo-

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sitions lie at the foundation of all adequate regulation of interstate railroads:

“1. Every interstate railroad should be prohibited from expending money or incurring liability or acquiring property not in the operation of its railroad or in the legitimate improvement, extension, or development of that railroad.

“2. No interstate railroad should be permitted to lease or purchase any other railroad, nor to acquire the stocks or securities of any other railroad, nor to guarantee the same, directly or indirectly, without the approval of the Federal Government.

“3. No stocks or bonds should be issued by an interstate railroad except for the purposes sanctioned in the two preceding paragraphs, and none should be issued without the approval of the Federal Government.

“It may be unwise to attempt to specify the price at which and the manner in which railroad stocks and securities shall be disposed of, but it is easy and safe to define the purpose for which they may be issued and to confine the expenditure of the money realized to that purpose. That such a measure of regulation is necessary, and that it can only be administered through the National Government, is the necessary conclusion from the facts developed in this proceeding.”

In St. Louis and San Francisco Railroad Investigation (January 20, 1914), 29 I. C. C. 139, the commission stated (at p. 153): “The policy of the Frisco in the acquisition

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of new lines at prices greatly in excess of construction costs and the sale of its funded debt securities at extravagant rates of discount, including the payment of premiums on retired issues and commissions to banks and bankers on such issues, the investment in stocks of industrial companies on which no dividends have been paid, the assumption of heavy fixed charges for its Texas lines as well as for the Chicago & Eastern Illinois Railroad far greater than its returns therefrom, and payment of excessive charges upon the investment in and use of terminal and coal properties have resulted in the net revenue of the Frisco being absorbed by such charges in a sum which approximates between \$3,500,000 and \$4,000,000 per annum.”

In re Financial Transactions of the New York, New Haven & Hartford Railroad Company (July 11, 1914), 31 I. C. C. 32, the commission stated (at page 33): “The result of our research into the financial workings of the former management of the New Haven system has been to disclose one of the most glaring instances of maladministration revealed in all the history of American railroading.

“* * * The difficulties under which this railroad system has labored in the past are internal and wholly due to its own mismanagement. Its troubles have not arisen because of regulation by governmental authority. Its greatest losses and most costly blunders were made in attempting to circumvent governmental regulation and to

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extend its domination beyond the limits fixed by law.” The commission further stated (at pp. 68-69): “This investigation has demonstrated that the monopoly theory of those controlling the New Haven was unsound and mischievous in its effects. To achieve such monopoly meant the reckless and scandalous expenditure of money; it meant the attempt to control public opinion; corruption of government; the attempt to pervert the political and economic instincts of the people in insolent defiance of law. Through exposure of the methods of this monopoly the invisible government which has gone far in its efforts to dominate New England has been made visible. It has been clearly proven how public opinion was distorted; how officials who were needed and who could be bought were bought; how newspapers that could be subsidized were subsidized; how a college professor and publicists secretly accepted money from the New Haven while masking as a representative of a great American university and as the guardians of the interests of the people; how agencies of information to the public were prostituted wherever they could be prostituted in order to carry out a scheme of private transportation monopoly imperial in its scope.”

In re Financial Transaction, History and Operation of the Chicago, Rock Island & Pacific Railway Company (July 31, 1915), 36 I. C. C. 43, the commission said (at p. 61): “The property of the railway company will be called upon for many years to make up the drain upon its

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resources resulting from transactions outside the proper sphere in which stockholders had a right to suppose their moneys were invested.”

In Pere Marquette R. R. Co. and C. H. & D. Railway Company (March 13, 1917), 44 I. C. C. 1, the commission in its summary and conclusion (at pp. 222-223) said: “The exploitation in 1903, 1904, and 1905 of the Pere Marquette and the C., H. & D. was not an incident of railroad construction. The properties had long been established. Whatever control or regulation of the issue of railroad securities was exercised by the States in which these roads operate was inadequate to prevent the exploiting or to forestall subsequent hasty and unwise reorganization. To the extent that these flotations ultimately lodged in the hands of innocent investors, whether here or abroad, the public was deeply wronged. Whatever control or regulation was had of the properties and operations of the two roads was not sufficient to keep them in condition to satisfactorily serve the population dependent upon them. The result has been the same with each, financial disaster to the carriers, serious loss to the holders of their securities, deterioration of their physical properties, and a marked impairment of ability to perform their functions as public servants.

“Nothing disclosed in the record before us is to be more regretted than the readiness of great banking institutions in our financial centers to loan enormous sums of money upon exceedingly precarious security in

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aid of such schemes as have been devised in the wrecking of these railroads. Not only this, but the high officers of such institutions, while acting ostensibly as directors of the railroads, have in fact been little more than tools and dummies for the promoters. The trustees of other people's money seem to have had little compunction about violations of their trusts for the benefit of the promoters, and at their demand.

“Can the like of what has befallen these two roads be made possible hereafter? Perhaps not entirely, so long as financial circles continue complaisant toward financial exploitations which prove successful. But it will help if minority stockholders are more watchful of their interests and if bondholders assert their rights before their security fades away for lack of upkeep, purposely neglected in order to pay interest and dividends unearned. It would, in our opinion, render such exploitation more difficult if the issuance and marketing of all securities of common carriers were subject to Federal regulation. As to that we renew the recommendations repeatedly made to the Congress in our annual reports. We also point to the lesson, here again taught, that access to correspondence files is indispensable for a thorough and accurate understanding of the motives and purposes which underlie the formal entries made in accounts and records.

“Unwise management contributed to the downfall of these roads, but breach of trust by corporate officials, often for personal gain, was the main cause here, as in

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the records developed in other investigations. * * * That downfall, with its deplorable consequences, can be traced only to betrayal within, and not to compulsion from without. Neither rivalry, nor rate level, nor regulation, nor all combined, can be found on this record to have contributed in any appreciable degree to the disaster."

In Wabash Pittsburgh Terminal Investigation (December 17, 1917), 48 I. C. C. 96, the commission said (at page 144): "The result of the operation of the Terminal to date shows clearly that the building of this property was a poor business venture. Fifty millions in bonds were issued against a railroad sixty miles in length and which cost about \$25,000,000. The par value of its first mortgage bonds alone exceeded by approximately \$5,000,000 the actual amount of cash expended for property devoted to transportation at the commencement of the receivership. Notwithstanding the assurance of traffic contained in its traffic and trackage agreements, and the 25 per cent. guaranty of the Wheeling and Wabash, the Terminal failed to secure sufficient tonnage to enable it to pay interest on its first mortgage bonds.

"As has been already shown in detail, the Terminal was not only greatly overcapitalized but the percentage of its funded debt, 83.04 per cent., to total capital obligations was unusually high. Against an actual cash investment in road and equipment and securities of affiliated companies of approximately \$38,000,000, there was out-

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standing, when receivers were appointed, over \$61,000,-000 in securities.

“This case illustrates again the great need for control of security issues and emphasizes the wisdom of the commission’s requirement which has been in effect since 1907, that the charges to the accounts reflecting the carriers’ investment in road and equipment shall be based upon the cash cost of property.”

In Proposed Increases in New England (April 16, 1918), 49 I. C. C. 421, the commission said (at pp. 430-431): “In a word, both the present corporate structure and the financial history of this so-called ‘railroad’ shows that it now is and for some time has been everything that a railroad ought *not* to be. With one of the finest opportunities in the world for successful railroading; with a property which for years prior to 1903 had been managed conservatively and steadily, if not very progressively, its present status is such that neither its present management nor the regulating commissions under whose jurisdiction it falls can do anything more than make the roughest kind of guess as to their proper course of procedure. It is impossible to ascertain and state with even approximate accuracy the facts which ought to guide both managers and public officials to sound and just conclusions. Its condition is the result of a decade of attempting to run a great railroad property regardless of either ethics or mathematics. See the New England Investigation, 27 I. C. C. 560, 607.

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“The following excerpt from our report in Financial Investigation of N. Y., N. H. & H. R. R. Co., 31 I. C. C. 32, 34, states some of the facts in its career:

“‘Marked features and significant incidents in the loose, extravagant, and improvident administration of the finances of the New Haven as shown in this investigation are the Boston & Maine despoilment; the iniquity of the Westchester acquisition; the double price paid for the Rhode Island trolleys; the recklessness in the purchase of Connecticut and Massachusetts trolleys at prices exorbitantly in excess of their market value; the unwarranted expenditure of large amounts in “educating public opinion”; the disposition, without knowledge, of the directors, of hundreds of thousands of dollars for influencing public sentiment; the habitual payment of unitemized vouchers without any clear specification of details; the confusing interrelation of the principal company and its subsidiaries and consequent complication of accounts; the practice of financial legerdemain in issuing large blocks of New Haven stock for notes of the New England Navigation Company, and manipulating these securities back and forth; fictitious sales of New Haven stock to friendly parties with the design of boosting the stock and unloading on the public at the higher “market price”; the unlawful diversion of corporate funds to political organizations; the scattering of retainers to attorneys of five States who rendered no itemized bills for services and who conducted no litigation to

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which the railroad was a party; extensive use of a paid lobby in matters as to which the directors claim to have no information; the attempt to control utterances of the press by subsidizing reporters; payment of money and the profligate issue of free passes to legislators and their friends; the investment of \$400,000 in securities of a New England newspaper; the regular employment of political bosses in Rhode Island and other States, not for the purpose of having them perform any service but to prevent them, as Mr. Mellen expressed it, from "becoming active on the other side," the retention of John L. Billard of more than \$2,700,000 in a transaction in which he represented the New Haven and into which he invested not a dollar; the inability of Oakleigh Thorne to account for \$1,032,000 of the funds of the New Haven intrusted to him in carrying out the Westchester proposition; the story of Mr. Mellen as to the distribution of \$1,200,000 for corrupt purposes in bringing about amendments of the Westchester and Port Chester franchises; the domination of all the affairs of this railroad by Mr. Morgan and Mr. Mellen and the absolute subordination of other members of the board of directors to the will of these two; the unwarranted increase of the New Haven liabilities from \$93,000,000 in 1903 to \$417,000,000 in 1913; the increase in floating notes from nothing in 1903 to approximately \$40,000,000 in 1913; the indefensible standard of business ethics and the absence of financial acumen displayed by eminent financiers in directing the

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destinies of this railroad in its attempt to establish a monopoly of the transportation of New England. A combination of all these has resulted in the present deplorable situation in which the affairs of this railroad are involved.'

"For present purposes it would not be profitable to undertake a complete analysis of the financial status of the New Haven system." The commission further stated (at pages 433-434): "But the gist of the New Haven's troubles is found in its so-called 'other investments.' The amount of these is, as already indicated, impossible to state. Various computations place them all the way from about \$150,000,000 to about \$227,000,000. The rate of return shown on its railroad property is thus necessarily subject to variation. Taking the larger figure of \$227,000,000, the New Haven is receiving an annual average income of about 1 per cent. on its outside investments; on a large part thereof, no income whatever is received. If a part of these outside investments be deemed absorbed into the railroad property investment, the rate of return on the railroad property is diminished proportionately and the return on the outside investments slightly increased. But making due allowance for all these variations and uncertainties, it is nearly accurate to say that the New Haven as an investment enterprise has now about \$200,000,000 invested in outside properties, yielding a return of less than 2 per cent. per annum.

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Manifestly, a large part of this 'investment' must be charged off as loss.

"The representatives of the New Haven would have us ignore, or pass very lightly over, the return shown upon its property used for carrier purposes. They lay emphasis upon the fact that its stockholders for four years have had no dividends; that the corporation is in grave danger of receivership. They ask us in substance to make good to the investors all, or a large part, of the losses incurred in the reckless and lawless mismanagement above outlined by imposing additional rates upon the patrons of the road. This we can not do. Money thrown away, dishonestly or with wanton recklessness, or foolishly lost in nonrailroad enterprises, is not money put to public use upon which the rate payers are bound in law and in conscience to make a return.

"We do not overlook that under our present form of corporate management the great majority of the stockholders in the New Haven enterprise were even more the victims of the mismanaging directors than were the patrons of the road. It is common knowledge that the directors of these great corporations are in fact selected by banking or other interests in too many instances actuated by motives essentially adverse to the interest of the stockholders toward whom they bear a fiduciary relation. But as long as our public policy is represented by the law as it now is, this commission must, so far as rate making is concerned, hold stockholders responsible for the mis-

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management of directors who, in contemplation of law, are selected by them. Until this commission, or some other governmental body with adequate power, permanently controls the issue of carrier securities and, within reasonable limitations, the application of the proceeds thereof, stockholders and other investors in carrier securities are certain from time to time to be subjected to such perils of mismanagement and resultant losses as have accrued to the stockholders of the New Haven, the Rock Island, the Pere Marquette, the Cincinnati, Hamilton & Dayton, and others. We say this with reference to future conditions, not overlooking the adequate, but temporary, safeguards now obtaining under Federal control.

“After a railroad corporation like the New Haven and some of our other well-located and prosperous railroads has had a long career of business success and reasonably safe management, its stock becomes widely distributed among investors who pay little or no attention to guarding their investments. But this situation fraught with grave danger to the investing public, is one with which the Congress must deal. As the law now is, this commission is powerless to afford any real remedy for past misdoings or in the future to protect other similar bodies of stockholders from depredations and losses of an analogous kind. We can do no more than investigate and condemn after the evil has been accomplished, and make a ‘report’ of losses and sufferings which we were powerless

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under the law to prevent. Private capital invested in carrier companies can not be generally safe under such lack of security regulation as has existed prior to Federal control.”*

“A transportation line,” says Mr. Clark (p. 13), “operating by virtue of a public grant and upon which the industrial, commercial and social life of communities depends, *should not be a football of speculation.*” (Italics mine.)

Mr. Clark (p. 12) said: “It would serve no good purpose to recite the many instances in comparatively recent years in which, through financial deals for which it is difficult to find any word of excuse, railroad properties have been bankrupted or saddled with almost overwhelming burdens of indebtedness, which have not increased the amount or value of property devoted to the public service, have not improved the service rendered, *and have on the whole had the effect of increasing the charges for service* (italics mine). There should be some way by which under the law these things could be prevented, or, if not prevented, by which the perpetrators could be required to adequately answer for their acts.”

In the judgment of the undersigned it is very necessary in finding a remedy for the so-called weak roads problem to find out what the evils have been and these are best determined by an analysis of some of the situations that

*See also Financial Relations, etc., L. & N. R. R. Co., 33 I. C. C. R. 168.

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have been presented to the commission (as late as April 16, 1918) and which are founded recorded in their reports, copious extracts from which have been heretofore quoted. There should, therefore, be no misinterpretation of what was said by Mr. Clark as above quoted, because the commission in the foregoing investigations (in all of which Mr. Clark participated), pointed out the evils and also specified some of the remedies to meet the difficulties. That the only way to provide a remedy is to study the evils existing, was stated more than 300 years ago in the opinion in Heydon's Case (3 Coke 7), decided in the year 1584, wherein it is said: "For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: 1st. What was the common law before the making of the act. 2d. What was the mischief and defect for which the common law did not provide. 3d. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth. And, 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to *suppress subtle inventions and evasions for continuance of the mischief* (italics mine) and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*." It was there pointed out that the law should be framed to

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“suppress subtle inventions and evasions” devised for private interest, and that the law should be interpreted “*pro bono publico*,” that is to say, for the public good.

The National Association of Owners of Railroad Securities, through its President, Mr. S. Davies Warfield, presented a statement under date of January 31, 1919, and a supplemental one under date of February 13, 1919. This Association called to its aid a galaxy of eight brilliant lawyers, including Elihu Root, John G. Milburn, John S. Miller, Hugh L. Bond, Jr., Forney Johnston, B. H. Inness Brown, Luther M. Walter and Samuel Untermyer.

The thought running through Mr. Warfield's documents is a “*leveling of railroad earnings as a whole*” (p. 26 of the statement of January 31, 1919). The italicised words “*leveling*” and “*as a whole*” are the italics of Mr. Warfield and not of the undersigned. The idea of “leveling” is spoken of by Mr. Warfield at several places in the Statement of January 31, 1919 (pp. 5, 26, 29). “Leveling” is but a form of socialism, the whole scheme of socialism being to pay the rewards of the efficient to the inefficient and take away the rewards from the efficient and give them to the inefficient. No such socialistic idea should find its way into our national law.

Mr. Warfield states (p. 1 of Statement of January 31, 1919): “Whether the condition described arose from the exploitation and mismanagement of certain railroads in years past made little difference to present owners of

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the securities.” The burden of Mr. Warfield’s statement seems to be the matter of a return on the investment made by present owners of securities in such securities rather than the investment made by railroad corporations in railroad property, although Mr. Warfield speaks in many places of a return to the railroads on the investments made by the railroad corporations in railroad property.

Mr. Warfield states (at p. 2 in the Statement of January 31, 1919) the purpose of his association: “The purpose of the association was announced that it would do whatever it properly could to protect investment made in railroad securities by the exercise of the rights belonging to the ownership of such securities.” Mr. Warfield thus emphasizes the purposes of the association to be, not so much the investment made by the railroad in railroad properties, as the investment made by the investors in railroad securities. Mr. Warfield further remarked (p. 28 of the Statement of January 31, 1919): “The plan will insure a continuation of dividends on the stock of railroads.” In this statement the word “insure” is placed by Mr. Warfield in bold-faced type. The general idea running through Mr. Warfield’s statements is a six per cent. return, although Mr. Warfield says in his Supplemental Statement of February 13, 1919 (at p. 11): “It must not be understood that any railroad would necessarily receive as much as six per cent. on its property investment account.” The words just quoted are placed in italics by Mr. Warfield.

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That Mr. Warfield had in mind the subject of a return on bonds and stocks appears from the following quotation from the Supplemental Statement of February 13, 1919 (at p. 1) in relation to two methods before the Senate committee: "Both methods relate to the form in which the net revenue from railroad rates is applied to the payment of a return on their bonds and stocks."

That Mr. Warfield had no idea of reducing the volume of the securities is apparent from the Supplemental Statement of February 13, 1919 (at p. 1) as follows: "The other method, reducing excess earnings instead of securities, is contained in our plan."

That Mr. Warfield's plan did not involve the reduction of securities is apparent from the Supplemental Statement of February 13, 1919 (at p. 2) wherein he said: "Under the second or the method we propose, present outstanding bonds or stocks remain, but the value of the securities of each railroad is dependent upon the *actual property* they represent and the *percentage of return* each railroad earns entirely through its own efforts, earnings in excess of the reasonable return being taken from it and under rates adjusted to the requirements of the plan we have submitted." The words in italics are the italics of Mr. Warfield and not of the undersigned.

So that there may be no misunderstanding of the plans of the National Association of Owners of Railroad Securities, as contained in the Statement of January 31, 1919, and the Supplemental Statement of February 13,

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1919, the student of the so-called weak roads problem should read each and every line of said Statement and Supplemental Statement and read between the lines. When Congress comes to enact new legislation, it should keep clearly in mind the mischiefs and defects now existing growing out of the so-called weak roads and, to use the words of the Court in *Heydon's Case* (3 Coke 7), embody language in the law that will unmistakably "suppress subtle inventions and evasions for continuation of the mischief." The admonition given in that case more than 300 years ago (in the year 1584) is as sound to-day as it was then.

That Mr. Warfield wants Congress to "insure" dividends on stock and yet opposes a reduction in capitalization, is apparent. This is a most extraordinary proposition in view of the notorious fact of over capitalization of the so-called weak roads—whose capitalization is out of proportion to the value of railroad property represented thereby. This is one of the greatest evils to be corrected by the new law. To use the language of the Court in *Heydon's Case* (3 Coke 7) this is the malignant "disease of the Commonwealth" that the new law should "cure."

We will now take up an analysis of some nineteen roads wherein it will be shown that on the investment cost in common stock at about the date of the Statement of Mr. Warfield of January 31, 1919, that on a return of six per cent. on such investment in common stock, the rate of return will range all the way from 18 to 154 per cent. In

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this analysis the investment cost per share, has been taken from the *Commercial and Financial Chronicle*:

(1) Chicago Great Western Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 29, 1919, ...	\$8.00
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	75%

(2) Denver & Rio Grande Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919, ...	\$3.875
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	154%

(3) Erie Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919	\$16.25
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	36%

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(4) Kansas City Southern Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919	\$17.00
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	35%

(5) Minneapolis & St. Louis Railroad:

(a) Par value per share of common stock, new	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 29, 1919	\$10.25
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	59%

(6) Missouri, Kansas & Texas Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919	\$5.00
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	120%

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- (7) New York, New Haven & Hartford Railroad:
- | | |
|--|----------|
| (a) Par value per share of common stock | \$100.00 |
| (b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919 | \$28.50 |
| (c) Return of 6 per cent. | \$6.00 |
| (d) Rate of return on foregoing investment cost | 21% |
- (8) New York, Ontario & Western Railroad:
- | | |
|--|----------|
| (a) Par value per share of common stock | \$100.00 |
| (b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919 | \$20.00 |
| (c) Return of 6 per cent. | \$6.00 |
| (d) Rate of return on foregoing investment cost | 30% |
- (9) Pere Marquette Railroad:
- | | |
|--|----------|
| (a) Par value per share of voting trust ctfs. | \$100.00 |
| (b) Investment cost per share of voting trust ctfs. on the New York Stock Exchange, January 31, 1919 | \$13.00 |
| (c) Return of 6 per cent. | \$6.00 |
| (d) Rate of return on foregoing investment cost | 46% |

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(10) St. Louis-San Francisco Railroad:

(a) Par value per share of trust ctfs. . .	\$100.00
(b) Investment cost per share of trust ctfs. on the New York Stock Ex- change, January 31, 1919.....	\$12.125
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing invest- ment cost	49%

(11) St. Louis Southwestern Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of com- mon stock on the New York Stock Exchange, January 28, 1919	\$17.00
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing invest- ment cost	35%

(12) Seaboard Air Line Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of com- mon stock on the New York Stock Exchange, January 30, 1919	\$8.00
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing invest- ment cost	75%

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(16) Western Maryland Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919	\$10.75
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	55%

(17) Western Pacific Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 30, 1919	\$18.75
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	32%

(18) Wheeling & Lake Erie Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 27, 1919	\$8.125
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	74%

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(13) Southern Railway:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919	\$26.75
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	22%

(14) Texas & Pacific Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919	\$33.50
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	18%

(15) Wabash Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 31, 1919	\$7.875
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	76%

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(19) Wisconsin Central Railroad:

(a) Par value per share of common stock	\$100.00
(b) Investment cost per share of common stock on the New York Stock Exchange, January 28, 1919	\$33.50
(c) Return of 6 per cent.	\$6.00
(d) Rate of return on foregoing investment cost	18%

In the past the Interstate Commerce Commission has dealt in a sensible way with the problem of making rates between points of origin and destination served by more than one common carrier. It is commonly said that the first time the matter of a general advance of rates was dealt with was in 1910, while as a matter of fact it came before the Interstate Commerce Commission in 1903 In the Matter of Proposed Advances in Freight Rates (9 I. C. R. 382). This report of the commission is monumental and one of the many great opinions delivered by Mr. Commissioner Prouty. In dealing with the precise question here discussed, Mr. Commissioner Prouty said (p. 425): "The question now presents itself, must we go further and examine the financial showing of other lines in determining what rate shall be applied by these lines? The transportation charge must be the same by all routes. Whatever rate is made on grain from Chicago to New York by the Vanderbilt System must determine the rate between that point and the Atlantic Seaboard by all

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routes. Since the fixing of a rate upon that system indirectly determines what that charge shall be upon all other roads, should we, by reason of this indirect effect, consider the condition of those roads?

“It might be manifestly unfair to select a single advantageous line and make that the standard. We have seen that grain can be transported under actual conditions by the Lake Shore and the New York Central Railroads from Chicago to New York at a cost less than that by most other routes. It would be hardly just to these other routes to compel the putting in of a rate upon that line which was reasonable with respect to it alone and which had no reference to its competitors. Upon the other hand, *it would be equally unfair to the public if the most expensive line were made the standard* (italics mine). The Southern Railway carries grain to some extent to Norfolk, Virginia. The distance is fully as great; and the rate less than to New York. Its operation is expensive; its tonnage comparatively light; its net earnings per mile only about \$1,700. A rate to the Seaboard which upon any fair basis of compensation to investment would be reasonable for that company would be extravagantly high for the trunk lines. *To permit such a rate would be to impose upon the general public the payment of an exorbitant charge* (italics mine).

“We are inclined to think that in the present case the public is entitled to whatever is a reasonable rate by these two great railway systems between the East and

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the West. The New York Central carries one-half of all the grain which reaches New York. It carries as far as Albany more than one-half that which reaches Boston, and a considerable portion through to destination. The Pennsylvania lines are not large carriers of grain to New York, but they transport one-half that going to Philadelphia and one-third that taken to Baltimore. The great bulk of export grain which moves to the Atlantic Seaboard passes out through these four ports; and the movement of export grain perhaps roughly indicates that of domestic. *Should these carriers be allowed to impose upon this vast grain traffic an unreasonable charge in order that some other railroad less favorably situated may earn dividends for its stockholders*'' (italics mine).

The doctrine laid down in the case just cited has been reiterated in many others and it will be enlightening to quote the first paragraph in the syllabus of the Commercial Club case (19 I. C. C. R. 218), as follows: "This commission has said that in determining a freight rate which must of necessity be charged by competing lines, it would not look exclusively to that line which could handle the business the cheapest or which was the strongest financially, but would consider as well the weaker rival; yet it has never intimated that the rate should be fixed solely with reference to the weakest line, *and it would certainly be most unjust to the public* (italics mine), in establishing these rates, to consider merely the expensive and circuitous route." The same doctrine was stated in the Re-

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ceivers' and Shippers' Association case (18 I. C. C. R. 440), affirmed by the Commerce Court under title of the Hooker case (188 Fed. Rep. 242).

During the course of the hearing before the Senate Committee on Interstate Commerce, Senator Cummins inquired whether there was any solution for the problem under existing law and Mr. Clark's answer to this question led to a discussion not only as to a solution under the existing law, but under such new law as might be framed. The dialogue between Senator Cummins and Mr. Clark was as follows (pp. 110-112):

"Senator CUMMINS. And there was no solution of the problem under the existing law, was there?

"Commissioner CLARK. Except as the commission has solved it by saying that it would not fix those rates on the basis of the cost of service by the shortest and best-equipped line, or the richest line, but would take into consideration the needs of the other line.

"Senator CUMMINS. That is true; and that resulted in giving to one railroad more than it ought to have, viewed from the standpoint that I think most people occupy, and giving to another railroad less than it ought to have for its service, did it not?

"Commissioner CLARK. I think so; yes.

"Senator CUMMINS. Now, the only way in which that element in the former problem can be removed is by absorption, is it not?—combination of the railroads of the country?

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“Commissioner CLARK. That would greatly simplify it, because then they could utilize the most economical line, and still they would get the earnings of both.

“Senator CUMMINS. And you are a thoroughgoing believer in the concentration or consolidation of the railways of the country into comparatively few systems?

“Commissioner CLARK. I am; yes, sir.

“Senator CUMMINS. But you have no hope, have you, that the railroads will voluntarily enter into such consolidation, doing full justice to the smaller and weaker roads?

“Commissioner CLARK. Oh, I think that there would be a very strong tendency in that direction and that it would gradually grow and that there would be a very large number of absorptions and consolidations if it were permitted.

“Senator CUMMINS. Why not do the thing which seems to be necessary, and that will help to accomplish the end we have in view, namely, adequate transportation at the lowest possible cost—and compel the consolidations which are necessary to bring about that result?

“Commissioner CLARK. I should not object to that at all, although, as I said in response to Senator Townsend’s question, I have never considered it from that standpoint.

“Senator CUMMINS. I think your answer was perfectly sound in one way, but it did not present an obstacle that could not be overcome.

“Commissioner CLARK. Oh, no.”

You can not cure a hare-lip and you can not supply a

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leg of blood and flesh when a man loses his leg. You can, however, improve the appearance of the hare-lip and you can supply a man with a wooden leg. The beauty doctor can improve the personal appearance of the deformed and the surgical supply man can very much improve the efficiency of the man who has lost his leg. We must help the so-called weak roads within the bounds of sound economics and common sense but in doing so we must not unduly burden the shipper who in turn passes on the increased cost to the actual consumer. We must not thus increase the high cost of living for the sole purpose of paying dividends on stocks which under no theory of justice or principle of public policy ought to be paid. To pay such dividends is merely paying a reward for wrongdoing and to compensate for such torts (the lawyer's language for wrongs). Mr. Justice Holmes (245 U. S. 534) said that "in the end the public pays the damages in most cases of compensated torts."

The recommendations made by Mr. Clark in his testimony before the Senate Committee on Interstate Commerce, those made by the Interstate Commerce Commission in its annual reports to Congress, the many remedies pointed out by the Interstate Commerce Commission in its various investigations and decisions and the common-sense manner in which the Interstate Commerce Commission has dealt with fixing rates as between various competing lines, will go far toward solving the so-called weak roads problem.

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To summarize the suggested remedies as to the so-called weak roads and in a measure to enlarge on them, the new law should contain provisions as follows:

- (1) To prevent unnecessary railroad building;
- (2) To require railroads to extend their lines;
- (3) Voluntary and compulsory merger of carrier lines within the limitations laid down by Mr. Clark that this should not extend to the merger or consolidation of more or less paralleling and competing trunk lines;
- (4) Voluntary and compulsory pooling of equipment within proper limitations;
- (5) Obligation on the part of carriers to furnish equipment;
- (6) Power to compel carriers to furnish adequate motive power;
- (7) Power to require standardization of equipment and motive power within well-defined limitations;
- (8) Voluntary and compulsory common use of terminals;
- (9) Most ample, complete and detailed power to supervise service and physical operation;
- (10) Power to prescribe both maximum and minimum rates;
- (11) Power to regulate the issue, sale, pledge and disposition of all securities;
- (12) Power to control all expenditures, including proceeds from the sale of securities and complete and ample power to prevent the diversion of funds;

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(13) That a railroad corporation should be prohibited from expending money or incurring liability or acquiring property not in the operation of its railroad, or for other than legitimate improvement, extension or development of that railroad;

(14) The prohibition of interlocking directors in carrier corporations whether competitive or noncompetitive;

(15) Power to prescribe rates to secure adequate revenue in the way of a fair return on the fair value of property devoted to the public service but not for the purpose of raising revenue for the payment of dividends on stock when under all the circumstances such stock is not entitled to dividends;

(16) Full power to prescribe exceptions and regulations as to routing; and

(17) The new law should embody therein the rules as now applied by the commission under the present law as exemplified In the Matter of Proposed Advance in Freight Rates, the Commercial Club case, the Receivers' and Shippers' Association case and other similar cases decided by the commission.

In addition, the new law should contain provisions as to the so-called weak roads as follows:

(1) To empower the commission to determine what proportion the funded debt and stock should bear to the entire issued capital with an express provision that the funded debt should not exceed 60 per cent. of the entire issued capital;

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(2) The commission should be given power to take steps itself or to proceed in court to compel the reorganization of a common carrier so that its entire issued capitalization should not exceed the fair value of the property devoted to the public service;

(3) The Interstate Commerce Commission should itself have power to appoint a receiver for a common carrier and provide for the form of its reorganization and specify the terms thereof. Some people have expressed horror at receiverships, but a receivership does not interfere with the physical operation of a common carrier. It continues to perform its functions as an instrument of interstate commerce, although its corporate capital financial management is temporarily suspended. "I do not think," said Mr. Clark (p. 84), "that the fact that certain impecunious railroads have been forced into bankruptcy affects the credit of a road that is financially sound and solvent." There seems to be no reason why the Interstate Commerce Commission should not be empowered to appoint a receiver for a common carrier when the public interest so demands. Congress has invested the Comptroller of the Currency with power to appoint receivers of national banks by Section 9272 of Barnes' Federal Code of 1919, and has made further provisions in reference thereto by Sections 9278 and 9279, said sections also being sections 9821, 9826 and 9827 of U. S. Compiled Statutes, 1916 and 1918.

(4) No voluntary reorganization of a common carrier

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should be permitted without being first approved by the Interstate Commerce Commission;

(5) In the case of a receivership of a railroad under court proceedings, the Interstate Commerce Commission should act as Master in Chancery just as is provided in Section 7 of the Federal Trade Commission Act of September 26, 1914. The commission should be given full power to prescribe the terms of reorganization under such receivership;

(6) The commission should be given power to compel the abandonment of the whole or a part of a line conducted by a common carrier when not in the public interest;

(7) The Commission should be given power to cancel unconscionable leases imposing undue burdens;

(8) The commission should be given power to prevent a common carrier entering into any leases or purchasing the stock of or assuming the obligations of any other common carrier and power to cancel same;

(9) The new law should provide not merely criminal but civil liability for directors and officers who divert funds of a corporation to purposes other than for which they were raised, or who enter into burdensome obligations and guarantees and unconscionable leases;

(10) The commission should be given power to compel a carrier to dispose of securities in its treasury which are unnecessary to secure its efficient operation and should supervise the matter of the investment of money in se-

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curities where such investment is made for the purpose of creating a reserve fund when the commission thinks it desirable that a reserve fund should be created; and

(11) The commission should be given power to initiate rates, and which should supplement the power of the carriers to initiate rates.*

MODERNIZING THE MACHINERY OF THE INTERSTATE COMMERCE COMMISSION.

Interstate commerce is our national commerce, and should therefore be administered by a national body. A plan has been put forward that the commission be re-organized and regional commissions created. Nothing more unwise has ever been suggested, and nothing which would do more to destroy confidence in national regulation.

The passage of the new law increasing the powers and functions of the Interstate Commerce Commission will necessarily increase its work and make imperative the enlargement of its machinery. Under the law as it is today, the commission consists of nine members and is permitted to divide itself into subdivisions of not less than three members each. The new law ought to provide for increasing its membership from nine to twelve, so as to enable it to work in four subdivisions. One great fault in the present law (and which will become a much graver one under the new law), is the absence of a permanent

*The new act, of course, should contain provisions in addition to those above enumerated as to other subjects than the so-called weak roads.

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head of the commission. As it is to-day the chairmanship of the commission rotates from year to year. The undersigned suggests that the commission shall consist of twelve commissioners of which there should be one chief commissioner and eleven associate commissioners, to be appointed by the president and confirmed by the Senate. The new law should provide that the chief commissioner should be selected with special reference to his administrative and executive ability and should enjoin upon the chief commissioner the special duty of expediting business. The present compensation of the commissioners is inadequate and the new law should provide a salary of \$12,500 a year for the chief commissioner and \$12,000 a year for each associate commissioner. The law should further provide that when a commissioner shall have served not less than ten consecutive years and has reached the age of seventy years, he should retire upon full pay. The compensation of the secretary of the commission should be increased from \$5,000 to \$7,500 per year.

In view of the great activities of the commission it is now impossible, except in rare cases, for a commissioner or commissioners to hear testimony in person. Every carrier and shipper would prefer that a member of the commission should sit in a case. As a consequence, testimony is heard usually by a single examiner. In recent years in a great number of cases the examiner is required to prepare a tentative report and parties to the proceed-

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ing are allowed to file exceptions and the case is argued before the commission or a subdivision thereof on such exceptions. This system is not calculated to bring the best results. The law should provide for the appointment by the President with the advice and consent of the Senate of twenty-four deputy commissioners at a salary of \$10,000 each per year, with the provision that after not less than ten years consecutive service and upon arriving at the age of seventy years they should retire on full pay. The law should specifically provide that in any and all cases where a tentative report is to be submitted that the case should be heard by three deputy commissioners. To their tentative report, of course, exceptions could be filed and the matter presented to the commission as is now the practice.

The idea of deputy commissioners was suggested by Senator Kellogg and Mr. Clark saw in it great possibilities as is shown by the following colloquy (p. 155):

“Senator KELLOGG. Let me ask you right here, Mr. Clark, if I do not interrupt you, what do you think of the plan for the commission having certain subsidiary officers or commissioners, if I may call them such—not commissioners having the same authority that you have, but representing the commission in different parts of the country—to whom people could appeal for relief, or to state their grievances, or lay before the local commissioners things that they wanted remedied?

“Commissioner CLARK. I have thought some of that

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and am thinking some of it now, Senator, and *I think that plan contains possibilities of great helpfulness and great good, if we can get the right men.*" (Italics mine.)

These deputy commissioners should be men as fully qualified as members of the commission. They should be mature men of the world just as are the commissioners. The cases presented to the commission are of nation-wide importance and set nation-wide precedents, and it is asking too much that an examiner of the commission should alone hear and submit a tentative report in a case. It may be suggested that the examiner might confer with other examiners or with a member of the commission, but such other examiners or member of the commission has not heard the case. Primarily the evidence should not be presented to one human mind but should be presented to three deputy commissioners, so that the case may be looked at from the various attitudes of various minds. Mr. Clark was opposed to placing the rate-making power in the hands of a Cabinet officer on this ground and his objection to a Cabinet officer fixing rates would apply equally to rates being primarily acted upon by a single examiner. The following dialogue brings out the idea (pp. 62-63):

"Senator WATSON. Has your commission considered the question whether or not you favor one man at the head of the railroad transportation system of the country, with a place in the Cabinet?

"Commissioner CLARK. Yes; we have talked on that.

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“Senator WATSON. May I ask what are your views about that?

“Commissioner CLARK. Well, I do not think that is a desirable plan.

“Senator WATSON. Why?

“Commissioner CLARK. It was suggested the other day by the director general that one man could make up his mind somewhat quicker than a commission—

“Senator WATSON (interposing). Yes; and that is the reason I am asking you the question.

“Commissioner CLARK. And there is no doubt that if you have a man who has the capacity for making up his mind at all, he can make up his mind more quickly than can several men; *but we think that several minds studying a question, and with an effort to bring their originally conflicting views into harmony, and considering the views of each other, are much more calculated to reach the right result.*” (Italics mine.)

INTERPRETATION, CONSTRUCTION AND APPLICATION OF THE ACT.

The general rules of law which in the past have controlled the interpretation, construction and application of statutes have too often been linguistic, formal and machine-like and not based on practical common sense. Mr. Justice Oliver Wendell Holmes, in his classic on the Common Law (at page 36) stated that “the law is administered by able and experienced men, who know too

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much to sacrifice common sense to a syllogism." It is well to embody this as a rule in the written law as a standing admonition and guide. Wurzel (Science of Legal Method, at page 333) pointed out that there is prevailing a syllogistic method of applying the law. The law should be interpreted, construed and applied not so much by dry syllogistic reasoning as by the experiences of business affairs. In the leading Two Hundred Chests of Tea Case (9 Wheaton 430), on the question whether low grade black tea was Bohea tea or black tea, Mr. Justice Story (at page 439) said: "It would have been as dangerous as useless, to attempt any other classification, *than that derived from the actual business of human life* (italics mine)."

It is commonly said that the intention of the law should be ascertained from the expressed intention of the law-giver, and the law-giver thus referred to is a legislative body. In a democracy such body is merely a representative of the people and therefore the true underlying purposes of the law should not be gathered from the legislative body, but from the people whose desires are embodied in a statute. Therefore there should be no machine-like interpretation, construction and application of a statute, but the same should be interpreted, construed and applied according to the intention of the people, and the purposes should be ascertained in economic legislation from the economic thoughts of the people. The views here expressed are supported by a number of well-known

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writers. Kohler stated (*Science of Legal Method*, at page 189) that statutes are to be interpreted as the products of the entire people of which the legislature is but the organ. He also said that statutes require interpretation because they can not be communicated except by words and that the thoughts are "concealed under the word as under a garment." He also gave it as his view that the thoughts expressed in statutes are by no means those of an individual author, but that "they are the thoughts of mankind itself which the legislator merely has given particular form and expression." Roscoe Pound (*Science of Legal Method*) said (at page 224): "In the positive stage, the law is regarded not so much as something proceeding from the will of the law-giver, as something proceeding from society through him; as being the product of economic and social forces working through him and finding expression in his words. Hence the text and the context is no longer held to be an all-sufficient guide."

Transportation is an economic service. When performed by a common carrier by rail, or by water-and-rail, it is regulated by rules embodied in the Interstate Commerce Act which is essentially an economic statute, dealing with an economic problem. Such statute, therefore, should receive an economic interpretation, construction and application.

Beard in his *Economic Interpretation of the Constitution of the United States* (at page 156) calls attention

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to the fact that Madison in the tenth number of the *Federalist* pointed out in no uncertain language that the first and elemental concern of every government is economic and that the chief business of government consists in the control and adjustment of economic interests and that the "regulation" of these various and interfering interests forms the principal task of modern legislation.

Even without the mandate of a statute the courts are beginning to recognize the principle that human laws operating as they do upon the layman, are not to be interpreted, construed and applied merely by mechanical rules, and that the courts should look to conditions shown from other than judicial sources. This was exemplified in the case of *Muller v. Oregon* (208 U. S. 412), wherein Mr. Justice Brewer said (at page 419): "It may not be amiss in the present case, before examining the constitutional question, to notice the course of legislation *as well as expressions of opinion from other than judicial sources* (italics mine). In the brief filed by Mr. Louis D. Brandeis, for the defendant in error, is a very copious collection of all these matters, an epitome of which is found in the margin." This same Mr. Brandeis, when he became Mr. Justice Brandeis, in delivering the opinion of the Supreme Court of the United States in the great economic case of *Luckenbach v. McCahan Sugar Company* (248 U. S. 139, decided December 9, 1918), stated (at page 149) that: "It is creditable to the ingenuity of business men that an arrangement should have been devised which

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is consonant both with the needs of commerce and the demands of justice." It is, therefore, important that when Congress comes to reenact the Interstate Commerce Act it should contain within itself a rule that that act and all acts amendatory thereof and supplementary thereto should be given an economic interpretation, construction and application.

In addition, such statute should be liberally interpreted, construed and applied to carry out its underlying objects and purposes.

When Congress comes to reenact the Interstate Commerce Act, it should contain within itself for its interpretation, construction and application, rules as follows:

(1) That said act should be given a practical, common sense interpretation, construction and application;

(2) That said act should be given an economic interpretation, construction and application; and

(3) That said act should be liberally interpreted, construed and applied, so as to carry out its underlying objects and purposes; that all cases within its objects, purposes, reason and spirit, should be included within said act and that cases within the letter and language of said act but not within its objects, purposes, reason and spirit, should be excluded therefrom.*

*These rules might well be incorporated into all other statutes pertaining to administrative bodies, whose functions pertain to economic subjects such as business, trade and commerce.

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INTERPRETATION, CONSTRUCTION AND APPLICATION OF PUBLICATIONS.

The Interstate Commerce Act should contain a provision that rates, rules, regulations and practices contained in publications by common carriers should be stated with certainty and precision, and when not so stated, should be interpreted, construed and applied strictly against the carriers and liberally in favor of the shipper.

THE POMERENE-ESCH BILL.

There is reproduced in this volume the Pomerene-Esch Bill (by far the best bill so far presented), which may well be used as a sekeleton on which to build a recodified and rejuvenated Act to Regulate Commerce. A very few parts of this bill should be omitted and much should be added.

IN CONCLUSION.

Mr. Clark is in no way responsible for the views expressed by the undersigned in this introduction or for the interpretation placed on Mr. Clark's testimony, the undersigned being personally and solely accountable for both. Nearly one hundred per cent. of Mr. Clark's suggestions may well be accepted by Congress in enacting the new legislation.

FRANCIS B. JAMES.

Washington, D. C., April 21, 1919.

HEARINGS
BEFORE THE
Committee on Interstate Commerce
United States Senate
SIXTY-FIFTH CONGRESS
THIRD SESSION
ON
THE EXTENSION OF TIME FOR RELINQUISHMENT BY THE
GOVERNMENT OF RAILROADS TO CORPORATE
OWNERSHIP AND CONTROL.

[231]* TUESDAY, JANUARY 7, 1919.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met in room 410, Senate Office Building, at 10 o'clock a. m., pursuant to adjournment, Senator Ellison D. Smith (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Mr. Clark, you are to represent the Interstate Commerce Commission in this investigation by the Interstate Committee in its efforts to arrive at some solution of the problem that now confronts us with respect to the

*Figures in brackets indicate the page of the official report of the Senate Committee on Interstate Commerce.

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transportation systems of this country. We have operated under the old system, and we have had now this interim of Government control. We now desire you to give us what information you have with reference to the part your commission has taken under both systems, so that we may have the viewpoint of the Interstate Commerce Commission with reference to the two methods used thus far.

STATEMENT OF MR. EDGAR E. CLARK, OF THE INTERSTATE COMMERCE COMMISSION.

Senator WATSON. Before Mr. Clark begins, I would like the privilege of asking whether or not he represents the views of the commission and was selected for that purpose?

Commissioner CLARK. I was just going to say, Senator, that the commission has talked these matters over a great deal. We have discussed all the various angles that have occurred to us or that have been suggested by others, and I have here a memorandum which represents the views of the commission with the exception of one member, who has an individual addendum to the memorandum, which I shall present.

Senator CUMMINS. The unanimous view of the commission?

Commissioner CLARK. Yes, sir; so far as stated in this memorandum. This memorandum is not argumentative nor statistical. It undertakes to state concisely certain

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purposes we think should be aimed at and certain things which we think should be accomplished.

The CHAIRMAN. I would like, at this juncture, to state that the committee, before we began these hearings, expressed the desire for each organization which is to present views before this committee, to select a representative, so that he or the representatives, might express the views of the body they represent, and that was along the [232] line that Senator Watson asked his question. I make this statement so that the different organizations will understand our desires.

Commissioner CLARK. The commission designated me to appear here under that understanding. I should like to suggest that I read this memorandum, which is brief, and then I should like to comment on certain portions of it, and in connection with that comment I should be glad to undertake to answer any questions which may be put to me.

Then I have had prepared, in our Bureau of Statistics, some figures which will answer questions which have been asked and which have not been answered in the examination heretofore, which I should like to present as a sort of an appendix to my statement.

The CHAIRMAN. You may proceed.

Commissioner CLARK. It is unnecessary to dilate upon the vital importance of transportation to the country, its commerce and industries, or to picture the immensities of the transportation business and of the plant which it

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employs. The questions now presented should be considered in a spirit as big and broad as are the interests to be affected thereby. The legislation to be enacted in answer to those questions should be based upon a policy as broad as the territory to which it applies, and the law in which our governmental policy is announced should be as big as the business to which it relates. Governmental regulation of corporations engaged as common carriers should reach the corporate activities wherever those activities may lawfully go in serving the public as interstate carriers. The responsibilities of operation under governmental regulation must be accepted by the carrier corporations and the responsibilities that go with such regulation should be accepted in full by the Government.

In our last annual report we said, with regard to the future of the railroads, that whatever line of policy is determined upon, the fundamental aim or purpose should be to secure transportation systems that would be adequate for the Nation's need even in time of national stress or peril and that will furnish to the public safe, adequate, and efficient transportation at the lowest cost consistent with that service, and that to that end there should be provision for the following:

1. The prompt merger, without friction, of all the carriers' lines, facilities, and organizations into a continental and unified system in time of stress or emergency. The thought underlying this is that, in the light of recent

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experiences, the President should be by law authorized in time of national stress or peril to assume possession, control, and operation of the transportation systems of the country to such extent as may be necessary to serve and protect the general public safety and welfare. Such action was found to be essential about one year ago. It is hoped that such an emergency will not again arise, but it seems wise to provide for it if it should come, and that all cavil and controversy as to the lawful power to act should be, by statute, set at rest. The Franco-Prussian War led the British Government to provide by law, in 1871, a plan for taking over for governmental needs the railroads of Great Britain. It did not need or use that power until in connection with the world war which began in 1914. The further thought is that there may possibly arise a national stress or emergency, not the direct outgrowth of a war in [233] which we are engaged, which would warrant and justify the exercise of such a power. If the power is provided by law, it does not necessarily follow that it will be used, and it must be presumed that no President would exercise it except upon appropriate or proper occasion.

2. Merger within proper limits of the carriers' lines and facilities in such parts and to such extent as may be necessary in the general public interest to meet the reasonable demands of our domestic and foreign commerce. The thought underlying this is that it might become necessary or be found desirable in the general

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public interest to permit, encourage, or require carriers within limits as to extent, territory, and time to merge their lines and facilities or the operation thereof. The exercise of such a power would necessarily be an administrative function.

3. Limitation of railway construction to the necessities and convenience of the Government and of the public and assuring construction to the point of these limitations. The thought underlying the first part of this suggestion is that in some instances, for speculative or competitive reasons, railroads have been built in excess of the reasonable demand and in excess of the necessities of the territory built into, as well as of its reasonably prospective traffic. A railroad once built ordinarily must be operated and permitted to earn a living. The public should not be burdened with the maintenance of two or more railroads when one would substantially answer every legitimate purpose. In this connection it would be desirable that in the exercise of its powers the Congress should say that no railroad shall be constructed or extended that is to engage or is engaged in interstate commerce unless, in addition to required authority from the State, a certificate of public convenience and necessity is secured from Federal authority. The thought underlying the second part of this suggestion is that a railroad having been permitted, by public franchise and the powers that go with it, to build into a given territory, it should be required to properly serve and develop that

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territory. And in developed territory it is important to provide for the extension of short branch or spur lines or spur tracks to communities and industries that should be served and that can furnish sufficient traffic to justify such extension.

In some of the States the State officers are authorized to require such extensions, but in such cases they are necessarily primarily concerned with, if not confined to, a consideration of State traffic. Some of the States have not vested such authority in any State official. Ordinarily such extensions would be desired for the purpose of facilitating or making possible the transportation of interstate traffic. The desirability of uniformity is obvious. The exercise of Federal authority should not depend upon whether or not the State has acted and should not be different as to the State that has legislated on the subject and the State that has not so legislated. It therefore seems desirable that the Congress should exercise its jurisdiction in this regard in a plenary way and that where such extensions are desired in connection with the movement of presently existing or prospective interstate traffic and the carrier is unwilling to construct them, it may, upon proper showing and after full hearing, be required to do so by the Federal tribunal.

[234] 4. Development and encouragement of inland waterways and coördination of rail and water transportation systems. This means the coördination of rail and water transportation systems by establishment and main-

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tenance of through routes between rail and water carriers and reasonable joint rates applicable thereto, divided upon reasonable bases, whenever and wherever such through routes will facilitate or economize in the movement of traffic and serve a real public interest. The law now prohibits a rail carrier from increasing a rate which has been reduced to meet water competition unless some justification for the increase can be shown other than the elimination of water competition. Where there is legitimate water competition and legitimate reason or occasion therefor, neither the railroads nor the water carriers should be permitted to reduce their competitive rates below a reasonable compensatory level for the purpose of stifling the competition. Rates that are on a level lower than is reasonably compensatory are not a public benefit. If they cover all the traffic the carriers' bankruptcy and destruction are inevitable. If it has other traffic it is certain that it will endeavor from that other traffic to recoup its losses under the noncompensatory rates. A well-directed and proper coördination of rail and water transportation systems will of itself be an encouragement to the development of inland waterways.

We suggested five plans which we thought, doubtless, would be proposed for adoption as our future governmental policy, and said that additional plans and modifications or combinations of those mentioned might be listed.

Much can be said on either side as to the relative

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advantages and disadvantages which accrue from or necessarily attend either Government ownership and operation or private ownership and operation. It seems obvious that no plan of private ownership should be considered unless it be under a broadened, extended, and amplified governmental regulation. Considering and weighing as best we can all of the arguments for and against the different plans, we are led to the conviction that with the adoption of appropriate provisions and safeguards for regulation under private ownership it would not be wise or best at this time to assume Government ownership or operation of the railroads of the country.

The law provides that Federal control shall not continue beyond twenty-one months after the promulgation of a treaty of peace. The wisdom of thus providing a reasonable period after the passing of the imperative necessities of our Government in actual prosecution of warfare, within which to readjust or make preparations for readjustment of traffic conditions and to round out or prepare financial arrangements is hardly open to question. Carriers' properties formerly composing a system are now under the jurisdiction of two or more regional directors or Federal managers, the current of traffic has been in some instances materially changed, and financial complications exist. Comparatively few contracts for compensation have been perfected between the transportation companies and the Government. Our ex-

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pression in favor of return to private ownership and operation is therefore not to be understood as favoring a return of the properties in a precipitate way. A reasonable period for readjustment or preparation should be afforded and reasonable notice should be given that upon a given date the properties will be restored to their owners.

[235] The experiences under Federal control have still further demonstrated, as had previously been shown in proceedings before and reports of the commission, that there is necessarily a direct relationship between the wages paid to railroad employees and the rates which the carrier companies must and may charge. The largest item of expense in operation of a railroad is that of wages. Manifestly, from a social standpoint as well as from the standpoint of the nature of the employment, and because of the great importance to the public as well as to the railroads of loyal and devoted service on the part of the employees, unaffected by excitement of wage controversies, and of uninterrupted operation of the carrier properties, the railroad employees should be adequately compensated. For the same reasons every reasonable provision should be made to insure proper compensation for the employees, a minimum of friction over questions of compensation or hours or conditions of service, and avoidance of interruption to the operation of the properties.

In the event, therefore, of a continuance of the policy

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of private ownership and operation under governmental regulation, we think that the following matters, mentioned in our annual report, require legislative consideration, in connection with which the following suggestions should be carefully weighed:

1. Revision of limitations upon united or coöperative activities among common carriers by rail and by water. Under the policy heretofore followed by our Government all efforts to restrict the full play of competition between carriers have been frowned upon or prohibited. Obviously competition between carriers that is wasteful or unnecessarily expensive lays an added burden upon the rate payers. Elimination of wasteful or unduly expensive competition in rates or service is desirable, and under the exercise by the Government of its power to regulate the service and the rates which the carriers may charge and to require an abatement of all unjustly discriminatory, unduly prejudicial, or unduly preferential charges, regulations, or practices, carriers might well be permitted and encouraged to coördinate their activities and merge or consolidate their lines to such an extent as is, after thorough investigation and full hearing, sanctioned by the regulating body. The rates should not be higher than the shipper may reasonably be required to pay and should not be lower than the carrier may reasonably be required to accept. The regulating tribunal should have authority to prescribe not only the maximum which the carrier may charge but also the minimum.

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This power would restrain an individual carrier from furthering its own ends at the expense of others by unwise and unwarranted upsetting of reasonable rate adjustments. If the rates and charges are by regulation confined within the reasonably narrow limits between the maximum and minimum reasonable charges, no public interest can be injured by the carriers all maintaining charges within those limits. If without unduly lowering or restricting the standard of service economy in maintenance and operation can be secured by coöperative agreement or consolidation, under governmental supervision and approval, of two or more lines, the public is not injured, while the sum available for improvements and betterments of the carrier properties is augmented.

2. Emancipation of railway operation from financial dictation. It would serve no good purpose to recite the many instances in com-[236]paratively recent years in which, through financial deals for which it is difficult to find any word of excuse, railroad properties have been bankrupted or saddled with almost overwhelming burdens of indebtedness, which have not increased the amount or value of property devoted to the public service, have not improved the service rendered, and have on the whole had the effect of increasing the charges for service. There should be some way by which under the law these things could be prevented, or, if not prevented, by which the perpetrators could be required to adequately answer for their acts. A transportation line

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operating by virtue of a public grant and upon which the industrial, commercial, and social life of communities depends, should not be a football of speculation. The records in investigations made and reported upon by us in cases of financial wrecking of railroad companies suggest the advisability of extending the terms of the Clayton Act with reference to common or interlocking directors so as to render them applicable to common carrier corporations, even when they are not competitors. Consideration of these questions and a corrective for the abuses referred to lead to

3. Regulation of issues of securities. The advisability, desirability, and propriety of public or governmental regulation of the issuance of securities by public service corporations is conceded generally by thinking and fair-minded men. A proper Federal regulation of the issuance of securities by the corporations engaged in interstate transportation and supervision of the application of the proceeds therefrom would go far toward preventing the abuses referred to in the preceding paragraph. The commission is on record for several years past as favoring such supervision and regulation of the issuance of securities.

4. Establishment of a relationship between Federal and State authorities which will eliminate the twilight zone of jurisdiction and under which a harmonious rate structure and adequate service can be secured, state and interstate. If the Government is to assume, as it should,

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all of the responsibilities that properly go with an amplified and broadened exercise of its regulatory powers, and the regulation is to be adequate, the regulating body must have authority and powers which it has not heretofore had over questions of service and physical operation of the carriers. In this way only can an adequate service be secured and kept in harmony with a reasonable level of rates. The conflict of jurisdiction as between Federal Government and the States could probably be resolved through harmonious coöperation if the Federal tribunal could be authorized to coöperate with State authorities by utilizing their services in appropriate instances and to an appropriate extent.

5. Restrictions governing the treatment of competitive as compared with noncompetitive traffic. This subject is necessarily linked with what has been said relative to revision of limitations upon united or coöperative activities among common carriers by rail or by water. If those limitations are appropriately broad there would seem to be no occasion for different charges, terminal or otherwise, as between so-called competitive and so-called non-competitive traffic, or for many of the old annoying and expensive restrictions surrounding milling and other services in transit.

6. The most efficient utilization of equipment and provision for distributing the burden of furnishing equipment on an equitable [237] basis among the respective carriers. Under broad revision of limitations upon co-

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öperative activities among carriers they could form equipment pools, which would add efficiency in the standardization of construction and in the utilization of equipment. Under the extension of authority to the regulating tribunal to require adequate service, carriers that are disposed to shirk their duty could be required to provide themselves with the equipment necessary to the furnishing of an adequate service.

7. A more liberal use of terminal facilities in the interest of proper movement of commerce. Here again a broad revision of the limitations upon coöperative activities among the carriers would naturally bring a more liberal use of the existing terminal facilities and would undoubtedly bring about agreements between competing carriers under which existing terminal facilities would be opened to traffic which is now and heretofore has been excluded. If the regulating body is empowered to require adequate service, it could require the enlargement of terminals, if that action were necessary in the public interest, and could require that terminals be opened to traffic in so far as is reasonably and properly in the interests of the commerce of the locality. Where this power was exercised, the regulating tribunal would, as a matter of course, determine the reasonable compensation to be paid to the owning carrier for the use of its property by the carriers or traffic so using that property.

8. Limitations within which common-carrier facilities and services may be furnished by shippers or receivers of

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freight. The carrier may provide facilities by ownership, lease, or hire. If they are leased or hired on reasonable terms from those who are not shippers or receivers of freight, no public interest is affected by the arrangement. If the regulating body has power to require an adequate service, it could determine what constitute proper facilities and the extent to which and the instances in which they shall be provided by the carrier. If the regulating body has power to require the most efficient utilization of equipment, it can determine the instances in which, and the extent to which, special equipment or facilities may properly be demanded of the carriers.

Transportation service and adequate service are demanded by the welfare, the industry, the commerce, and the social life of the whole people. Securing that class of service is more important than is the question of whether it shall be furnished at a slightly higher or a slightly lower charge. An adequate service can not be provided except from adequate revenues, and as a result of adequate expenditures for maintenance, improvement and expansion. Private capital can not be induced to invest in railroad securities unless it can be reasonably assured of the security of the investment and an appropriate return thereon. It necessarily follows that the patrons of the transportation companies must pay rates that will yield revenues sufficient to justify rendering the quantity and character of service demanded. The charges should

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not be higher than those that will yield proper compensation for the service performed and appropriate return upon the property devoted to the public use. If through enlightened, broadened, and wise regulation that proper balance between revenues, on the one hand, and returns to capital and expenditures in operation, maintenance, and improvement, on the other [238] hand, can be established, the public will be well served at reasonable charges, the employees of the transportation companies will be adequately compensated for their work, and the shippers and receivers will secure, at reasonable rates, an adequate service. It would seem to follow necessarily that the securities of the corporations would become stabilized, and that when it becomes necessary to utter additional securities under governmental supervision, capital seeking investment would readily respond to the call.

Commissioner Woolley did not agree with the other members of the commission, and I shall now read his memorandum.

Senator POMERENE. May I ask for my information—I was not here when you started, Mr. Commissioner—do these views which you present represent the views of the other members of the Interstate Commerce Commission?

Commissioner CLARK. They represent the views of the other members of the Interstate Commerce Commission with the exception of Commissioner Woolley, and I call

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attention right there, Senator, to the fact that this memorandum was agreed to by the commission in conference in its present form on the 21st of December.

Mr. Woolley says:

“If the railroads under Federal control are to be turned back to their owners, then I subscribe to the memorandum submitted by my colleagues, except wherein it says, ‘considering and weighing as best we can all of the arguments for and against different plans, we are led to the conviction that with the adoption of appropriate provisions and safeguards for regulation under private ownership, it would not be wise or best at this time to assume Government ownership or operation of the railways of the country,’ with the following two additional recommendations:

“(1) With power to supervise the issuance of railroad securities, to prescribe service regulations, and to fix the minimum as well as the maximum transportation rates vested in the Interstate Commerce Commission, the commission should also be made the tribunal to which carriers and employees, organized and unorganized, would appeal for adjustment of any differences arising between them; also, it should have authority to investigate from time to time the living conditions of railroad workers, to insure regularity of employment, and to fix a minimum wage. Congress should require the carriers, possibly by amending section 10 of the Clayton Antitrust Act, to make all purchases of materials, supplies, etc., through

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competitive bids in the open market, and their correspondence and other documents bearing on transactions of this nature should be subject to inspection by representatives of the Interstate Commerce Commission. This body would then be in a position to act on full information in prescribing reasonable rates, in seeing that there is a fair return on capital invested, and in adjusting labor disputes; labor itself would know that its rights were being protected even in cases where its demands might not be approved by the commission. If some such plan is not adopted by Congress, clerks and unorganized labor generally, having no effective means of protecting their rights, will inevitably be the first to suffer upon the least shrinkage of income after return of the roads to private control.

“(2) The carriers should be required to set aside fixed portions of their gross annual incomes for depreciation, the percentage to be determined in each case by the Interstate Commerce Commission. This would insure uniformity of method in caring for the properties, and publication of the percentage prescribed in each instance would safeguard the interests of the purchasers of their securities. Chairman Daniels and I are practically in accord on this point.

“I believe the period of Federal control should be extended, as recommended by Director General McAdoo, for a number of reasons, some of which are:

“(1) With the Government borrowing more than \$20,-

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000,000,000 in a period of two years and with railroad securities, largely speaking, depressed or in a measure discredited, I fail to see where the money is coming from to insure to the United States an efficient and articulate growing transportation system, vitally necessary in the great period of reconstruction just beginning, if the roads are to [239] be returned to their owners for operation. In spite of the clamor from several quarters against further Federal control, the fact remains that following the statement of the Director General that the roads may be given back at an early date, if the period of Federal control is not lengthened, there came shrinkages in market quotations of many railroad stocks, in some instances as much as 20 per cent.

“(2) Some of our great railroad systems have credit sufficient to raise in the open market the new money which will necessarily be required from time to time for the development of their properties. For instance, the Pennsylvania, the Burlington, or the Santa Fe may find it possible to float bonds or notes, but I think it will not be seriously contended that a majority of the railroads now under Federal control could do likewise. Especially would they find it difficult if so-called ‘broker management’ should be definitely removed, as is in effect recommended by a majority of the commission. It is hardly possible that our great financial houses would under the circumstances be willing or able longer to

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market large issues of railroad stocks in order to secure additional funds.

“(3) A real danger spot is the so-called ‘Weak Sisters.’ That many not already bankrupt might be thrown into the hands of receivers almost immediately upon return to private control is hardly debatable; that most of them are indispensable links in our national transportation system and should be improved and developed is generally admitted. The Government is the only possible source of financial help for this class of roads.

“(4) Our public utilities, with approximately \$260,000,000 of bonds maturing in the next six months, have been under a heavy strain for some time. If the financial waters should be seriously disturbed through the forcing of the weak members of the present Federal control group into bankruptcy many of these utilities would find it difficult to weather the storm.

“(5) Probably for the first time in our history all classes of railroad labor have received under Federal control at least reasonable compensation. The rights of union and nonunion workers have been alike considered, with the result that ample living wages have been granted. These workers demand that the recent increases be not withdrawn or reduced. Certain adjustments, with a view to establishing proper relationships of wages for given classes of employment, may be necessary, but, generally speaking, I think the workers in so demanding have a strong case.

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“(6) Though the present freight rate structure is undoubtedly the best that could have been devised under competitive conditions and the act to regulate commerce, long and ably administered by the Interstate Commerce Commission, I am firmly of the opinion that there is urgent need of a new system of rate making, and I see no hope of its being achieved except under Federal control or with the Government owning the railroads. The so-called rate blankets, grouping of communities, basing points, etc., outgrowth of competitive conditions in my humble opinion make for favoritism and are highly uneconomic. In a word, the freight rate has been frequently used as a sort of protective tariff by means of which favored cities or communities have prospered at the expense of others. The freight rate should be made, under proper classification, on the basis of a terminal charge plus straight mileage. We are coming to it some day, because it is the only just and logical plan, and I think the sooner it is perfected and adopted the better.

“(7) I am aware that our year’s trial of Federal control has not been an unqualified success; but to my mind the good accomplished far outweighs the shortcomings and is a promise of better things for the future.

“(8) The proposal to return the railroads to private control, though widely discussed by railroad men, financiers, and shippers has not yet, so far as I am aware, been productive of any concrete plan which would carry

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the undertaking safely over the breakers obviously ahead."

Now, Mr. Chairman, with regard to this expression of Commissioner Woolley, I want to say that the majority of the commission did not incorporate into the memorandum which I have read any specific expressions in regard to legislation or governmental policy affecting the question of wages and conditions of employment of the employees.

The suggestion, as made by Commissioner Woolley, is that these questions should be brought to the Interstate Commerce Commission. The policy of the Federal Government since 1898 has been reflected [240] in the Erdman arbitration law, superseded by the so-called Newlands Act, and under both of those acts the Government has provided, apparently in the largest possible measure, means for mediation, conciliation, and arbitration at the expense of the Government, and we of the majority did not think there was justification for our suggesting that the effort along those same lines should be taken out of the hands of those in whom Congress has reposed it and be placed in our hands because we were not able to suggest any cogent reasons why we should be any more successful at efforts of conciliation, mediation, and arbitration than others who have handled and are handling those questions, and apparently that is as far as the efforts of the Government can go in that direction, unless the Government is going to adopt a more repressive policy.

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We did not include in the majority memorandum any reference to the question of reserves or charges for depreciation, for the reason that we can not see that there is any occasion for any further legislation on that subject. The commission now has power to require the carriers to set up depreciation. It has exercised that authority only to the extent of requiring a charge for depreciation on rolling stock. It is a very complicated question, as to just what is the proper charge for depreciation. It seems obvious that any uniform charge for depreciation must have in it some element of arbitrary determination, because the conditions are not exactly the same on any two railroads. The question of the life of two locomotives, exactly alike, at the same day, brand new, one placed on one road and the other on another is entirely different. It depends very largely on the degrees of skill, intelligence, and care that are exercised and the way in which those locomotives are used, cared for, and maintained. Again, the actual depreciation of the property of a carrier, especially rolling stock and property that is continually in use, as well as the depreciation of roadway and structures, varies from year to year, depending upon the character of the weather. An extremely hard winter is very much more wearing upon tracks and upon rolling stock than is a mild, open winter, and for these reasons the majority of the commission did not incorporate anything on that point.

Senator KELLOGG. You already have the power.

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Commissioner CLARK. We have the power, and have exercised it to the extent that I have stated, and we have directed the beginning of a further investigation of that subject, because in the wholly unexpected condition growing out of the taking over of these railroads by the Government, and the necessity for insuring compensation in accordance with the terms of the Federal-control act, there has been shown more plainly than ever before, as a practical measure, the importance of charges for depreciation, because it is obvious that you can not get at the true railroad operating income without some consideration and allowance for depreciation. But the importance of that as a practical matter never emphasized itself as it has in connection with the unprecedented events of the last year.

Senator CUMMINS. You have the power now to establish a uniform rule for depreciation and allowance to be made for that item, have you not?

Commissioner CLARK. I think so; yes, sir. And it is a question—well, as I say, we have already directed a very careful inquiry into it, [241] and are going into it and through with it. I do not mean it will be done within a short time, but we will go through and endeavor to, as far as possible, do that, and with a minimum of arbitrary allowance endeavor to bring about a complete system of depreciation charges as nearly uniform and as proper as they can be made.

Senator CUMMINS. So Mr. Woolley's suggestion upon

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that point is rather a comment upon the work of the commission than a recommendation for further legislation.

Commissioner CLARK. We do not see the occasion for any legislation. If there is any fault, it is of the commission.

Now, I will only comment upon one other point in Mr. Woolley's paper, and that is his suggestion for an entirely new system of rate making, and the views he expresses with regard to the system now more or less in vogue—and which has been in vogue for a great many years—of grouping places under a common rate. That system obtains mainly with regard to the transportation of natural products, such as coal and lumber, and I think I can illustrate my thought on it best by the simplest kind of an illustration.

There is a substantial area underlaid with coal. Mines are opened at various points. They all seek the largest consuming markets within their reach, and, in order to avoid unnecessary competition between the carriers that serve those fields and those markets, and in order to give the purchasers in those markets an equality of opportunity to purchase of any mine in that field, and the miners or operators in that field an equal opportunity to sell in competing markets, the rates from all of the mines in a given group are made the same. Now, my simple illustration is this: If you take two mines seeking a common large consuming market, and depending upon that market for their ability to operate their mines, if

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the reasonable rate from the nearest mine is 80 cents and the reasonable rate from the more distant mine is \$1, the group rate would be, normally, 90 cents. Now, if you displace that 90-cent rate with rates of 80 cents and a dollar, respectively, from those two mines, it seems to be morally certain that the purchasers in that market will not get any coal from the mine which has the 80-cent rate except at a price as high as it can make and still retain a shade of advantage over the mine which has to pay the dollar rate, so that the mine operators of the mine which is a little more distant would be put at a relative disadvantage and the purchasers would not, as I see it, gain any advantage in the price of coal which they would have to purchase.

Senator KELLOGG. May I, right there, Mr. Commissioner, ask a question?

Commissioner CLARK. Yes.

Senator KELLOGG. Take another illustration: I suppose the Mississippi Valley, or certainly including the State of Ohio, to the Rocky Mountains, is the great grain and food producing country. A mileage rate to the seaboard on food products would certainly not be in the interest of the great masses of the people along the seaboard, or the people in the interior.

Commissioner CLARK. I should not think so, and I should think if you project a railroad out into a grain-growing belt, where they must depend upon grain for any product, and progressively increase that rate on a

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strictly mileage basis, you eventually get to a point where [242] they can not grow any grain because the price of grain is fixed primarily at Liverpool, and—

Senator KELLOGG. It is governed a great deal by the surplus in the foreign markets, is it not?

Commissioner CLARK. Yes, by the surplus in the foreign markets, and the price in New York is made with reference to that, and the freight rates are taken into consideration.

Senator CUMMINS. But would not that entirely depend on the extent of the demand?

Commissioner CLARK. Yes—

Senator CUMMINS. And if the demand was sufficient to require the distant regions to send in their supply, they would still be able to market it at a higher price. But that, as you suggested before, would fix the value of the grain in the entire market, because those that could get it there more cheaply would, of course, take advantage of the cost of transportation from the more distant regions.

The CHAIRMAN. Would not that necessarily lead to the thought that you have expressed here, about allowing the roads, under certain regulations, to merge? Take, for instance, your illustration about the grain and coal supplies, if, in a certain undeveloped territory there was an independent railroad organization which led up to and connected with a larger and stronger road that can take a greater tonnage, how would you adjust that rate

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on the small road, or, we may say, the weaker road, lying almost entirely in a sparsely inhabited territory, so as to produce a competitive rate, and in order to enable the growers or producers in that territory to compete in the markets, to which you referred? To apply your suggestion that the rate that would be applied within a given territory would have to be uniform and a blanket rate, how could that small road live on the rate that the larger road, going through an extensive traffic-producing territory, gets?

Commissioner CLARK. Ordinarily, Senator, it can not.

The CHAIRMAN. Precisely.

Commissioner CLARK. And that is one reason why we think the public interest would be served by allowing the large road to take in that small road, and then the traffic which it originates tends to swell the traffic over the mileage of the big road; it is merged into the property, and what is lost temporarily—and which it, standing alone, could not carry—by merging it into the operations of the big company, becomes scarcely discernible.

The CHAIRMAN. In other words, the excess earnings that the longer road might make through the standardized or developed country by taking in the smaller road and merging it, would be allowed to compensate for such losses as might be sustained by the smaller road in going through this, what we might call, poorer territory.

Commissioner CLARK. Yes, sir; and it has been my experience, through many years, that where there has been

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a small, independent road on the verge of bankruptcy, unable to properly serve the territory which was dependent on it, and it has been absorbed by one of the large, strong systems, it has been improved; the conditions of the employees have been improved, their pay has been increased, and the hours of work have been bettered, and the service rendered to the community has been greatly improved.

[243] Now, giving full significance to the idea which has underlaid the legislation heretofore, that it is unwise to permit any suppression of competition, it seems to me, and to the majority of my colleagues, that no possible public harm can come from those absorptions of such lines so long as the Government holds its regulating hand upon the charges which the company may make to its patrons.

The CHAIRMAN. And so your proposal to operate these roads under a properly regulated control system necessarily, in the main, would eliminate competition and would decide what was the proper compensation for the service rendered?

Commissioner CLARK. That is our idea exactly, and it is a great deal easier to regulate one large, well-organized corporation than it is to regulate half a dozen poorly financed and poorly organized corporations that do not care how they go into bankruptcy, whether this way or that [indicating].

Senator GORE. Is it not your thought that under cer-

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tain regulations the Government should encourage these mergers?

Commissioner CLARK. Yes, sir.

Senator GORE. I was not here when you began, but it is my understanding that you think that the Clayton Act should be extended, so as to permit mergers under the jurisdiction of the Interstate Commerce Commission?

Commissioner CLARK. Yes, sir; our idea is that sound public policy would permit the consolidation of lines, even though they are, in some degree, competitive, or there is a possibility of competition between them, whenever that consolidation is approved by the proper Federal authority to which that power has been delegated, after a full investigation and public hearings.

Senator GORE. The interstate-commerce act prohibits pooling. Do you not think that act should be modified, so that the roads which do not merge or consolidate may be permitted to enter into reasonable pooling arrangements.

Commissioner CLARK. What I have said would go to that proposition also.

Senator GORE. The present law prohibits free routing. Do you not think, under a comprehensive system of regulation, that you should permit the carriers the privilege of free routing?

Commissioner CLARK. I think the present law invites uneconomic routing and routes. This would be largely

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eliminated by some of the consolidations to which I have referred.

Senator GORE. Does not the privilege on the part of the shipper to route freight give the individuals the power to congest or divert or, really, to regulate the transportation of the country, without any reference to its economical administration?

Commissioner CLARK. Yes; it fixes their will in the matter as the controlling rule, and irrespective of what may be the actual conditions at the time, and irrespective of how much economy might be attained, or how much expedition might be secured by some other routing.

Senator GORE. Did you ever consider the desirability of the Government purchasing the rights-of-way of the railroads, permitting the tracks, crossties, equipment, rolling stock, and everything of that sort to belong to the railroads, but for the Government to buy the [244] rights-of-way, and thereby to stop the continued increase of the so-called "unearned increment"; to fix that at the present stage, whatever it may be?

Commissioner CLARK. No; we have never considered that, Senator.

Senator GORE. I wish you would run that through your mind sometime.

Commissioner CLARK. I certainly will.

Senator UNDERWOOD. Mr. Commissioner, on this question of competition, I take it, from your recommendations, that the commission has reached the conclusion

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that where there is proper regulation, there is no necessity for competition?

Commissioner CLARK. Yes, sir.

Senator UNDERWOOD. That the two do not go hand in hand, but that they are rather in conflict with each other; and that if you have no regulation, you should have competition?

Commissioner CLARK. Undoubtedly.

Senator UNDERWOOD. But if you have proper regulation, there is no necessity for competition?

Commissioner CLARK. Yes.

Senator UNDERWOOD. Now, taking that as the basis; we have rate regulation now, which probably ought to be amplified; but we have no uniform or extended system of regulation of service and facilities; that is correct, is it not?

Commissioner CLARK. That is correct.

Senator UNDERWOOD. Now, if we should abolish the Sherman antitrust law and the antipooling law, it could be accomplished without affecting our system of regulation of rates; but for facilities and service, there being no regulation, if we should allow the railroads to combine into one or more large corporations, would it not be necessary to provide for the regulation of facilities and service, before that were accomplished?

Commissioner CLARK. Oh, yes; and that is, I think, quite clearly stated——

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The CHAIRMAN (interposing). Do you not recommend that in your brochure?

Commissioner CLARK. Yes.

Senator UNDERWOOD. I was not here at the time that was presented. Now, I want to ask you another question: There are two great difficulties that confront the Congress in passing legislation, and which confront the country in handling this question. One is the question of capitalization, and the other is the question of rates, is it not? Those are the basic questions that underlie all the others?

Commissioner CLARK. Well, I should add the question of "operating expenses"—more particularly that of wages.

Senator UNDERWOOD. But the operating expense, of course, is based on rates. When you have the revenue, there is no trouble in taking care of the operating expenses, and it is an incident; so that the basic proposition in regard to operating expenses, which included the wages and all other questions, is really the question of rates. If the rate is sufficient the railroad can take care of the balance; and, on the other hand, if the capitalization is based on watered stock or fictitious issues of securities, then there is a danger to the property which is unnecessary?

[245] Commissioner CLARK. Undoubtedly.

Senator UNDERWOOD. So, I take it that the cardinal propositions that confront the Congress in passing legis-

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lation are the regulation of the issuance of securities and the control of the system of rates. There are many other questions, but those are the basic questions.

Commissioner CLARK. Both of which we strongly recommend.

Senator UNDERWOOD. I am in accord with your recommendation about the issuance of securities, if we can do so, and as far as we can do so, and I want to ask if you have investigated the question as to how far we can provide for the issuance of securities where the corporation is a State-organized corporation; where it gets its power to issue securities from the State government, how far can the Federal Government invade that jurisdiction?

Commissioner CLARK. I think, Senator, that is controlled by the principle which has been so clearly announced by the Supreme Court, that in matters which come within the jurisdiction of the Congress, under the commerce clause, in so far as the Congress has not seen fit to act, the State may act; but when the Congress speaks, the State action must give way.

Senator UNDERWOOD. I think you are right about that in matters regulatory; I do not think there can be any question about that. But here is a fixed status. Has the Government of the United the power to scrap and put out of existence an organization created by the State, except through the taxing power? Of course, in the bank cases it has been decided that we could levy a 10 per cent. tax on State banks, and that the court would not determine

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whether the tax was levied for revenue or for other purposes, and thereby destroy the State institution; but without the exercise of the taxing power for the purpose of destruction, what power has the Federal Government got to destroy a State institution?

Senator KELLOGG. May I make a suggestion here?

Senator UNDERWOOD. I am asking the question for information and light, and not as a statement of conclusion.

Senator KELLOGG. As I understand it, the issuance of stock is a corporate function which the State has granted to the corporation, and quite likely the Federal Government could not amend the charter so as to change the form of the stock or anything of that kind; but the Federal Government, in its regulatory power, may say, "You shall not issue under your State charter unless you comply with Federal regulations as to its being paid for," so as to prevent the overstocking of a corporation engaged in interstate commerce in which the United States is interested. That is a repressive regulation, not an amendment of the charter or a grant of power. Is not that your idea?

Commissioner CLARK. And the further thought that what we suggest—and which is as important as the feature to which you have referred—is a supervision of the expenditure of the proceeds from these added securities.

Senator KELLOGG. Oh, I include that.

Commissioner CLARK. No railroad has, in my judg-

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ment, ever been embarrassed financially if the proceeds from the sale of its stocks and bonds have been devoted to the development of the property. It is the diversion of the proceeds of these securities to other channels [246] that leaves the railroad with a burden of debt that it can not carry. Then, again, Senator Underwood, I suggest that, to my mind, this would be in no sense a destruction of the creation of the State. I think it would be the salvation of many of them.

Senator UNDERWOOD. Of course, it probably would.

Commissioner CLARK. I am not trying to discuss this as a technical question of law, but I have noted that when a railroad which has been built under a State charter, created by a State franchise, defaults on its bonds, the receivership is in a Federal court and not a State court.

Senator UNDERWOOD. That is usually due to the fact that it is a foreign corporation.

Commissioner CLARK. Yes.

Senator UNDERWOOD. And not due to any right under the commerce clause of the Federal Constitution. It is the mere fact that it is a foreign corporation in the State in which the legal procedure is commenced, and that carries it to the Federal court.

Commissioner CLARK. The Congress has said that certain appliances shall be used by railroads engaged in interstate commerce, and that there shall be certain limitations upon the hours of service of the employees, and the

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courts have uniformly held that those regulations prescribed by the Congress supersede all State law.

Senator UNDERWOOD. I do not question that, Mr. Commissioner, at all. In my judgment, there is no broader power in the Federal Constitution than the commerce clause. It is the broadest power of all the powers the Federal Government has, unless it be the power to make war, and the powers growing out of that. And as long as it is regulatory I can see beyond question that it goes to the entire borders of the country; but when it comes to a question of prescribing the terms on which a State charter shall operate, or fixing the terms of the operation of a charter secured from one sovereign by another sovereign, I have some doubts about it. I am in thorough accord with the view that railroad securities should be controlled by the Government; I think it is absolutely necessary, if we are going on under private ownership; but I wanted to ask you if the commission had investigated the question as to how far we could go. Now, of course, I think it will be helpful in most cases, but the laws that we pass in Congress must be uniform; it must reach to every railroad; it must apply to every railroad. Now, while it might be a just law and very helpful to a number, it might be destructive to the last one. A law providing for the issuance of securities on account of the weakness or some other conditions in some of these corporations might destroy the corporation entirely; and if it did, then it would raise the question as to whether or

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not the Congress has the power, under the commerce clause of the Constitution, to pass legislation that is destructive of the rights under the State charter. Now, I wanted to ask you if the commission had reviewed this question from that standpoint.

Commissioner CLARK. No; I do not think the commission has; in fact, I know that the commission has not gone into it that deeply, as a purely legal question, Senator. We have entertained no doubt of the power of the Congress to regulate these matters, especially in view of the fact that the capitalization of a railroad and its efforts [247] to carry the burden of debt that it has assumed, and to secure dividends upon its stocks, however heavy the stock issue may be, have always had, necessarily, more or less effect upon the attempts of that railroad at least to fix charges upon the public.

Senator GORE. Have you considered the advisability of Federal incorporation of all interstate carriers?

Commissioner CLARK. We have talked of that, Senator Gore, but we have not undertaken to make this memorandum argumentative, nor have we suggested the exact terms of any bill. We realize that there are many angles to these various questions.

Senator GORE. What I had in mind was that that might be the only way to arrive at control of these issues.

Senator UNDERWOOD. I was going to ask about that.

Senator GORE. Excuse me, Senator.

Senator UNDERWOOD. Certainly. When you come down

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to the question of Federal incorporation, the Federal Government probably has the power to charter a Federal corporation for the purpose of carrying on interstate commerce. I do not think there is much question about that; but most of these corporations, if not all, now hold their charters from the States. If we conclude to pass a law providing Federal incorporation, the railroads now exercising the power held from the States, has the Federal Government any power to enforce the adoption of a Federal charter by the railroad and the surrender of its State charter?

Commissioner CLARK. I should be very sceptical about that.

Senator UNDERWOOD. It seems to me it is a very doubtful proposition. On the other hand, it has been contended by some that we might condemn, through the right of eminent domain, the roads that are exercising State charters and in that way force the adoption of a Federal charter; but I want to ask you if the commission has investigated the question in any way as to whether the Congress has the right and power to pass a law that would require a corporation performing a public service, at present holding a charter from a State, under the power of eminent domain, to surrender that or to take away the exercise of the right of public service under a State charter and force it to accept a Federal charter?

Commissioner CLARK. No; I have never heard it suggested that the power of the Congress would extend that

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far, and I have never heard it suggested in our own discussions of this matter that there was any occasion for such extreme action. We think that a proper and broad supervision of the issuance of these securities—bonds and stocks—and of the expenditure of the moneys derived therefrom, will be sufficient to avoid the things which we think ought to be avoided, and to which I have referred in this paper.

Senator UNDERWOOD. You think under private ownership that is as far as it is necessary to go in this regulation of the issuance of securities and the control of the receipts of the corporation?

Commissioner CLARK. We do.

Senator UNDERWOOD. Now, on the other hand, let me ask you this question: The basic principle on which these railroads can run and prosper is, of course, the receipts; that is, the collections from freight and passenger traffic. Now, from the standpoint of the shipper, has the present system of allowing the railroads to initiate the rate, [248] and the commission to pass on each separate case, proved satisfactory to the shipping public?

Commissioner CLARK. I think it has been very satisfactory to some of them, and it is very unsatisfactory to others. With so many railroads exercising the power to initiate rates, and with the competition between them in full play, the power of the shipper with a large tonnage is very great; and it is to correct evils and difficulties that grow out of those facts that leads us here, and has

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led us in our reports in previous years to recommend that we have the power to prescribe the minimum below which they may not go, as well as the maximum above which they may not go.

Senator UNDERWOOD. Now, if the railroad were guaranteed, by proper legislation, sufficient return from its freight and passenger rates to run the railroad—to take care of betterments, improvements, and repairs—and a reasonable return on its capital invested, would it not be better to give to the commission, or whatever central body the Congress may put it in the hands of, the entire power to initiate and make rates?

Commissioner CLARK. I am not sure that it would not be even better than a limitation, or, rather, better than to leave them to initiate rates, with the limitations which I have suggested upon the powers of the commission. It necessarily follows that if you are going to adopt a policy such as you suggest—and, really, that is the sound public policy—you can not fix the rates with regard to the conditions and circumstances of an individual carrier, where there are two or more competing carriers for the same business and between the same points. Their physical conditions are not the same; the natural legitimate investment in the two properties would not be the same, and their actual cost of doing the business would not be the same, and, therefore, a rate upon which one of them might, in its present condition, thrive and prosper, would be inadequate for the other; and, therefore, if you are

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going to maintain both of those properties under the public policy which contemplates that they shall be operated as public servants and properly serve the public that depends upon them respectively, you must take into consideration the conditions of both of them. There must be something in the way of an averaging of those conditions in determining the reasonable rate.

SENATOR POINDEXTER. Why could they not be required, under the power of the Congress, to regulate interstate commerce, to pool their earnings, and divide them?

COMMISSIONER CLARK. Senator, that would be a part of and covered by the suggestion which we have made here of the revision of the limitations upon the competitive activities of the carriers. Our suggestion is that not only ought there to be opportunity to absorb into the larger systems the poor and weak railroads that are unable to furnish the right kind of service, and unable to further finance themselves, but that there should be a wiping out of the limitations upon the consolidation or unification of the carriers' competitive facilities and lines, to such extent as may be approved by the designated Federal authority after full investigation and public hearing, so that everybody may know what the proposition is; so that everybody may know what is said in support of it; so that everybody [249] may know what objections, if any, are advanced; and a report of that tribunal or authority, whatever it was, on the subject would state to the public what ought to be done, and why it ought to be

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done, and there would be no public interest injured, that we can see.

Senator POINDEXTER. That would remove the difficulty you have just mentioned, of having to make the rate for both lines, so that the more expensive one should earn a dividend?

Commissioner CLARK. Well, I did not go so far as to suggest that the more expensive one should earn dividends, because there are some of them that never can earn dividends on their present capital under any rate that would be considered.

Senator POINDEXTER. What is your solution of the problem you have just mentioned, where the rate would be profitable to one road and not profitable to the other?

Commissioner CLARK. A rate that would give them a reasonable return on the property that they devote to the public service.

Senator UNDERWOOD. If you had the power to fix the rate—not a rate that would be reasonable so far as the specific charge on a ton of pig iron or a basket of feathers is concerned, but a reasonable rate that would yield a fair return on the investment in the property actually devoted to the public service—the commission would discriminate as to how much of that capital investment was fictitious and how much of it was real?

Commissioner CLARK. Yes.

Senator UNDERWOOD. And you have that power now?

Commissioner CLARK. Yes.

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Senator UNDERWOOD. Now, if the Congress should give the commission the power to initiate the rate on the basis of a reasonable return to the railroad, in those cases where it was a question of through rates and competitive rates you could establish the rates on the same basis, but as to those rates that were not competitive you could allow a sufficient return in order to meet the financial obligations of the property. Could not that be done?

Commissioner CLARK. I think so; yes, sir; and that leads me, Mr. Chairman, to offer right here a statement that I had made up in our Bureau of Statistics from the official reports of the carriers to the commission.

Senator KELLOGG. Have you any extra copies of that?

Commissioner CLARK. Yes; I have three copies altogether, Senator.

Senator UNDERWOOD. I would like to have you put one of them in the record.

Commissioner CLARK. Yes; I intended to put this in the record. There has been a great deal said, especially since 1910, when the railroads may be said to have first begun to press the commission for general increases in their rates, about the "credit of the railroads," and a great many newspapers and magazine writers have dilated upon the fact alleged by them that the credit of the railroads had been destroyed by niggardly regulation, and those statements have been aimed especially at the Interstate Commerce Commission.

Now, as of some interest in that connection, I had these

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figures drawn off from their annual reports to the commission for the years, beginning 1900 and ending with 1916, the last year for which we had these figures available.

[250] This statement shows the miles of road, the amount of funded debt, the amount of stock outstanding, the amount of interest on the funded debt, the amount paid in dividends, the percentage of outstanding stock upon which dividends were paid, the average rate of dividends for the roads that did pay dividends, the operating revenues, the operating expenses, the taxes and the operating income, the surplus at the close of the year, the book cost of the property—that is, taking the carrier's book investment account at its face value, although, as we have commented in some of our reports, prior to 1907 there was no accurate guide whatever to the amount of money actually invested in the property, and, finally, the percentage of railway operating income to the book cost of the property, that book cost being what I have just suggested.

Now, it was not until August 28, 1906, that the act which gave the commission power to fix a rate became effective, and I just want to point out a few of these figures as illustrative of what they show:

In 1906 the funded debt of the steam roads of the United States—I will read in round numbers—was \$7,766,000,000; in 1916 it was \$10,938,000,000.

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In 1906 their outstanding stock amounted, at face value, to \$6,803,000,000; in 1916, \$8,743,000,000.

In 1906 the interest on their funded debt was \$322,555,000; in 1916 it was \$474,534,000.

In 1906 they paid in dividends \$272,795,000. In 1916 they paid in dividends \$342,109,000.

In 1906, 66.5 per cent. of the outstanding stock paid dividends. In 1916, 60.38 per cent. paid dividends.

Senator POMERENE. What were those figures, again?

Commissioner CLARK. In 1906, 66.5 per cent. of the outstanding stock dividends. In 1916, 60.38 per cent. paid dividends. There was a smaller percentage of outstanding stock on which dividends were paid in 1916 than in 1906.

Senator POMERENE. And in 1906 was what?

Commissioner CLARK. Sixty-six and one-half per cent. The average rate of dividend for the roads paying dividends in 1906 was 6.03 per cent. In 1916 it was 6.48 per cent.

In 1906 the operating revenue was \$2,325,000,000. In 1916 it was \$3,472,000,000.

The operating expenses in 1906 were \$1,536,000,000, and in 1916 \$2,277,000,000.

The operating income in 1906 was \$714,000,000, and in 1916 it was \$1,043,000,000.

Now, I call especial attention to these figures: The surplus at the close of the year—and that, you understand, is what is left after interest charges have been

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met and whatever dividends were declared have been paid—the aggregate surplus at the close of the year in 1906 was \$636,000,000, and at the close of 1916 it was \$1,935,000,000.

The book cost of the property, as shown by the carriers' books, was \$12,420,000,000 in 1906, and \$17,684,000,000 in 1916.

Senator POINDEXTER. What was the increase in mileage in that period?

Commissioner CLARK. The mileage in 1906 was 224,363, and in 1916 it was 254,251—an increase of 30,000 miles.

[251] Senator McLEAN. You have taken just two years. Those details would vary greatly in comparing other years, I suppose?

Commissioner CLARK. They show, the figures which I have read, a practically uniform increase; that is, a progressive increase. I will not say "uniform," but a "progressive" increase of these several items. The average rate of dividend has fluctuated between 6.03 per cent. and 8.07 per cent.

Senator UNDERWOOD. In other words, you think those figures—and they apparently do—point to the fact that the investor in railroad securities need not be apprehensive of Government regulation, so far as his security is concerned?

Commissioner CLARK. They point to the fact, Senator—and, as I stated before, they are their own figures;

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they are not ours, except as we have taken them from their reports—that, in the aggregate, their increase in revenue has kept pace with all increased investment, and the operating income has increased more than the increase in the number of miles; and the surplus has increased marvelously. That surplus must have been earned.

Senator UNDERWOOD. Unquestionably; and it is apparent from these figures, as a whole, that the condition of railroad securities has improved, rather than depreciated, under Government regulation, because the surplus at the close of the year, in proportion to the mileage, is very much greater now than it was in 1906?

Commissioner CLARK. If you will pardon the interruption, that is why we do not understand the continued reiteration of the statement that the credit of the railroads has been destroyed by the process of regulation.

Senator GORE. Mr. Commissioner, is not this another significant fact to be taken into consideration in that connection: That the tendency of the rate of interest has been generally upward, and the consequence is that while bonds of all sorts have tended to fall off in value, railroad bonds have stood up as well, under that tendency, as bonds of other descriptions, which shows that this tendency is due to general causes, and is not related to railroad securities alone?

Commissioner CLARK. I think, Senator, it was very abundantly shown in connection with what we call “the

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15 per cent. case," that taking the market quotations and the market prices as indicative, there had been no more impairment of the values of Government securities than of industrials or other public securities.

Senator GORE. You mean "railroad" securities.

Commissioner CLARK. Yes.

Senator GORE. You said "Government" securities.

Commissioner CLARK. Yes. I meant "railroad" securities.

Senator GORE. That tendency has been due to general causes?

Commissioner CLARK. Yes.

Senator UNDERWOOD. If the Congress were to adopt the policy of rate regulation, and should authorize the commission to prescribe the rate, of course, subject to an appeal to the courts, as they have now, but to initiate the rate instead of the railroad company initiating the rate, on the basis that the railroad company, as a whole—not in detail but as a whole—should have a reasonable return on its invested capital, as well as an amount necessary to run the road, would not that have a tendency to stabilize railroad securities, rather than otherwise?

[252] Commissioner CLARK. I should think it would completely stabilize them. It would be more than a tendency.

Senator UNDERWOOD. And it would do away with the difficulty of the railroad marketing its securities, where it had a good property, and would go hand in hand with the

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efforts of the Government to regulate the issuance of railroad securities, would it not?

Commissioner CLARK. I think it would.

Senator UNDERWOOD. Now, on the other hand, would not that system be very much better for the shipping public? Would it not be a better system for the business man who is interested in shipping his freight under the present system?

Commissioner CLARK. I think so, and I think it would tend to quiet a great many apprehensions that the shipping public now has. There is more or less suspicion in the minds of men as to why a railroad does a certain thing, and there is more or less scepticism as to the accuracy of the representations that are made in support of it. If the policy which you suggest were adopted by the Government, and the administration of it committed to the commission, the commission would have the responsibility of determining what was a reasonable level of rates, and, having done that, the public as well as the railroads, in my judgment, would accept it; and many of these questions that are now brought up in the form of complaints, and which cause endless instances of litigation, would never arise, because the determination would have been made in advance and there would be no further controversy at all.

Senator UNDERWOOD. Now, let me ask you this: Where a railroad initiates a rate that is not satisfactory to the shipper, and the shipper is required to appear to the

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Interstate Commerce Commission for relief, through what period of time does a case of that kind usually drag?

Commissioner CLARK. That depends altogether upon the number of rates involved, and the number of commodities, and the extent of the territory over which they apply. Some of them, simple in their nature, are disposed of promptly; but where there is a large volume, or a large number of rates, and wide territory affected, it takes longer; as, for example, a proposal for a general increase in rates upon a percentage basis, or some other uniform method, raises a great many protests, the interests of a great many people are involved, and that takes substantially longer. In some proceedings it has taken a year to investigate.

Senator UNDERWOOD. Where it is a large shipper, with large interests involved, there is not so much difficulty in his pursuing his contention to an ultimate conclusion before the commission, and ultimately before the courts; but if it is a small shipper, with a small amount involved, he is practically under the present system, driven to accepting the rates initiated by the railroads, and can not pursue his appeal? Is not that so?

Commissioner CLARK. No; I do not think that is quite accurate, Senator. There are probably instances of that kind, but every town of importance, nowadays, has its chamber of commerce or board of trade or traffic associa-

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tion, and they handle these things for the individual members.

Senator UNDERWOOD. What I was leading up to was this—

[253] Commissioner CLARK (interposing). And, if you will pardon me just a moment, there are a good many instances in which the State commissions are charged by the States with that duty—of prosecuting complaints of that kind before the Interstate Commerce Commission.

Senator UNDERWOOD. What I am leading to is this—it is not a criticism of the Commission—

Commissioner CLARK. Oh, I undertand that.

Senator UNDERWOOD. It is simply conditions to which I am referring; but I was leading in my mind to this, that if we charged the Interstate Commerce Commission with the authority and duty of establishing all rates on the basis I spoke of before would it not be more responsive to the needs of the shippers? In other words, if there were complaint as to the injustice of a rate would not the complainant have a better opportunity to get relief than he would under the present system?

Commissioner CLARK. I think so, and I think he would have less occasion, after the system once got down to a smooth working basis, to complain of it, because all those things would be taken into consideration in determining the rates.

Senator UNDERWOOD. Then I judge that, speaking for the commission, you think that if we can pass legislation

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that will properly regulate the issuance of securities, and put the power to initiate rates and to establish rates on the railroads throughout the country in the hands of the commission—the absolute power—that, to a large extent, we would have relieved the evils and the troubles that have been complained of in the past?

Commissioner CLARK. I think you would want the supervision of physical operation, to which you referred a few moments ago.

Senator UNDERWOOD. Of course, that goes with it, as I understand.

Commissioner CLARK. Yes; I think that would go very, very far.

Senator WATSON. Mr. Commissioner, if I catch the purport of your recommendations, all the members of your commission, save Mr. Woolley, are against the five-year-extension asked for by the Director General?

Commissioner CLARK. Well, we are against it to the extent that we do not think it is a wise policy.

Senator WATSON. Precisely; and all the members of your commission, except possibly Mr. Woolley, are opposed to Government ownership?

Commissioner CLARK. Yes, sir. That is—I do not want to be misunderstood on that score—one or more members of the commission, in their discussion of various things, have said that if such and such a thing which has been suggested by somebody, were to be adopted, they would be in favor of Government ownership.

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Senator WATSON. Oh, certainly.

Commissioner CLARK. But assuming governmental regulation, the commission is opposed to Government ownership.

Senator WATSON. And all the members of your commission, with the possible exception of Mr. Woolley, deem it unwise to cast the railroads back into the hands of their owners without some legislation?

Commissioner CLARK. Unqualifiedly.

[254] Senator WATSON. And all the members of your commission, with the possible exception of Mr. Woolley, believe in private ownership, private management, and broadened governmental control?

Commissioner CLARK. Yes, sir.

The CHAIRMAN. May I ask a question right there?

Senator WATSON. Certainly.

The CHAIRMAN. Carrying out the plan suggested here, would it not be, to all intents and purposes, a unification of the entire railroad system of America?

Commissioner CLARK. Well, it would make possible that unification, in so far as it is necessitated by the interests of the public.

The CHAIRMAN. That is the point I am getting at. It would be unification of the entire railroad system of the country under the control of whatever body the Congress might see fit to set up, having the power to say where a road should be built, and taking charge of the physical property in reference to the manner in which it should

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be operated, the use of terminals, and establishing uniform service, regardless of whether the community were developed or undeveloped, and bringing about a condition of unified service.

Senator WATSON. That is what I wanted to come to a little later on. Mr. Commissioner, as I understand the report of the commission, you are in favor of the elimination of all competition; is that right?

Commissioner CLARK. Except the competition of service.

Senator WATSON. How do you distinguish between "competition of service" and other kinds of competition, if you would have the railroads operated as a unified whole?

Commissioner CLARK. Our suggestion is not so complete a unification as exists at the present moment. Our suggestion is for the elimination of unnecessary and wasteful competition; and, speaking only illustratively, it has not been my thought at all that if the commission were endowed with the power that is here suggested it exercise it to the extent, for example, of permitting a consolidation or merger of the New York Central system and the Pennsylvania Railroad system; but there may be a good many small roads between them, connecting with one or the other of them, which it would be in the public interest to have one or the other of them absorb and make it a part of a big healthy member of society.

Senator KELLOGG. I do not understand that you believe

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that all competition as to service between the great carrier lines of this country should be eliminated?

Commissioner CLARK. Not at all, Senator.

Senator WATSON. No.

The CHAIRMAN. But you have suggested, Mr. Commissioner, that proper service should be enforced, regardless of competition?

Commissioner CLARK. Yes, sir.

The CHAIRMAN. And the competition that would come would be in the way of a desire to render the public better service in order to prove their greater efficiency; but you would enforce proper service, regardless of competition?

Commissioner CLARK. Yes.

Senator GORE. Do you not think, Mr. Commissioner, that it would be better to merge, under the supervision of the Interstate Commerce Commission, all the railroads of the country into two or three national railroad systems, covering the whole country? Would not [255] that be better than arbitrarily or artificially dividing the country into different regions—this regional proposition?

Commissioner CLARK. I have never been able to quite see the beauties or the benefits of the so-called regional system, Senator.

Senator GORE. Would not such a regional system be reversing the law of progress, and tend to disintegration rather than to integration?

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Commissioner CLARK. I think it would be a great deal better public policy, and that everybody would be better off and better served if the railroads were consolidated into a comparatively few large systems of road.

Senator GORE. Any regional segregation of the country, no matter how wise, would be artificial in its nature?

Commissioner CLARK. Yes, sir. I would not have any difficulty, so far as I am concerned, in approving the extension, under one corporation, of a railroad from the Atlantic to the Pacific, if they wanted to do it.

Senator GORE. If we had two or three systems extending from the Atlantic to the Pacific, and from the Great Lakes to the Gulf, which would, of course, result in competition for service and give the traffic of the country a choice between them, that would be better than any artificial subdivision, it seems to me.

Commissioner CLARK. I think that would be better.

Senator GORE. Of course, with lateral arteries connecting in between, here and there.

Commissioner CLARK. Yes.

Senator GORE. Have you considered at all the unification of the railway transportation of the country with the merchant marine?

Commissioner CLARK. No; we have not. We have considered the question of coördination of the rail systems with water systems serving our domestic traffic.

Senator GORE. Senator Watson, continue the point you

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had in mind, and then there are two or three questions I wish to ask later on.

Senator WATSON. I was just trying to get at the thing they recommend here.

Senator KELLOGG. Right on that point, I did not understand that Commissioner Woolley recommended Government ownership, or recommended turning back the roads without the opportunity for legislation. Did I misunderstand it?

Commissioner CLARK. I do not think that I have said that he does.

Senator WATSON. No.

Senator KELLOGG. I inferred from Senator Watson's question——

Commissioner CLARK (interposing). He said: "The members of your commission, with the possible exception of Commissioner Woolley."

Senator WATSON. Yes; and inasmuch as he did not make it clear, I did not care to fix his status definitely.

Senator CUMMINS. Mr. Woolley makes his position rather clear in his own statement.

Senator WATSON. You do not, then, believe, Mr. Commissioner, in paying a fixed dividend, as is now paid under the standard return to all railroads, regardless of the amount of traffic or the service rendered?

[256] Commissioner CLARK. I do not think I quite catch the point of that question.

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Senator WATSON. We are now paying fixed dividends to stockholders?

Commissioner CLARK. No; I do not think so.

Senator WATSON. Under the existing law?

Commissioner CLARK. The Government has pledged itself to——

Senator WATSON (interposing). A standard return?

Commissioner CLARK. It has pledged itself to pay to the carriers, as compensation for the use of their properties during the period of Federal control, a sum——

Senator WATSON (interposing). Equal to the standard return?

Commissioner CLARK. Equal to the railway operating income for the test period.

Senator WATSON. Precisely.

Commissioner CLARK. But it works out, as to a good many of these railroads, that that guaranteed standard return is a deficit.

Senator WATSON. Are you in favor of continuing that sort of operation or control?

Commissioner CLARK. Not after the period within which we can reasonably emerge from the present Federal control.

Senator WATSON. Precisely. That is what I wanted to get at. If you were to eliminate all competition of every kind then you could not get a new railroad built in the country, could you?

Commissioner CLARK. Yes; you could require the rail-

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way that was serving that territory to build it. That is one of our propositions.

Senator WATSON. Suppose it is an undeveloped country; suppose it is a new country, with no railroads built down through it, would you compel, then, the nearest trunk line railroad to that territory to build a railroad off into it?

Commissioner CLARK. Yes. There are not what I would call large regions in the continental United States that are not near railroads already constructed. Now, a railroad having been given a right to build into what was previously an undeveloped territory ought not to be permitted, as a public servant, to build as far as its selfish desires or its competition with some other road dictates, and to stop there, regardless of the needs of that territory; but the railroad, having been given a public franchise under which it goes in there, the Government should exercise its right to require it to develop the territory into which it has built.

Senator WATSON. And to build as many side lines as may be necessary for that purpose?

Commissioner CLARK. Yes.

Senator WATSON. That is what I wanted to find out—your idea about it. Now, is it or is it not true—I am quite sure that a good many of us believe it to be true—that before the railroads were taken over by the Government many of them were on the point of financial collapse; that they could not finance their betterments; they could

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not even make their renewals; they could not go into the market and borrow money; is that true or not?

Commissioner CLARK. As I have stated, the records for the three years included in the test period—that is, from June 30, 1914, to [257] June 30, 1917—show that as to quite a number of them they made a deficit instead of having an operating income.

Senator WATSON. Yes; that was true. And is it not true that, at least in part, that was due to the fact that unregulated securities were selling at a higher level in the market than regulated securities at that time?

Commissioner CLARK. I do not know as to that, Senator. I would not have any opinion on it. I may say that I have never been able to accept, in my own mind, a very strong or direct connection between the selling price of securities on the New York Stock Exchange and the real worth of the securities or the property underlying them.

Senator WATSON. I am asking, only as a matter of fact——

Commissioner CLARK (interposing). Yes; I understand.

Senator WATSON (continuing). Whether or not that was not true?

Commissioner CLARK. I do not know about that.

Senator WATSON. Has your commission considered the question of whether or not you favor one man at the head of the railroad transportation system of the country, with a place in the Cabinet?

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Commissioner CLARK. Yes; we have talked on that.

Senator WATSON. May I ask what are your views about that?

Commissioner CLARK. Well, I do not think that is a desirable plan.

Senator WATSON. Why?

Commissioner CLARK. It was suggested the other day by the Director General that one man could make up his mind somewhat quicker than a commission——

Senator WATSON (interposing). Yes; and that is the reason I am asking you the question.

Commissioner CLARK. And there is no doubt that if you have a man who has the capacity for making up his mind at all, he can make up his mind more quickly than can several men; but we think that several minds studying a question, and with an effort to bring their originally conflicting views into harmony, and considering the views of each other, are much more calculated to reach the right result; for the same reason that the Senate does not have one man as a Committee on Interstate Commerce, we think that it is undesirable to have one man to run all these railroads of the United States—the most tremendous industry in the United States, with the sole exception of agriculture.

Senator WATSON. Precisely, and I entirely agree with you, so far as that is concerned. That is one of the things recommended, and I wanted your views on the subject. I am told, without knowing, that that is one of

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the provisions contained in the recommendations recently formulated by the railroad men themselves. I do not know whether that is true or not, but I am told that, and that is why I wanted your views on it.

Commissioner CLARK. Assuming that to be true, we would still disagree with it.

Senator WATSON. Now, you say in your statement that you are in favor of eliminating the twilight zone which seems to hover on the borderland between Federal and State jurisdiction. Will you be a little more specific about that, and tell us just what you mean and how that is to be done?

[258] Commissioner CLARK. Our suggestion is that it could probably be resolved by coöperation between the State and Federal authorities, if the Federal commission were authorized to so act and to utilize the services of the State commissions in appropriate instances and to an appropriate extent. Now, there are a great many of the activities of State commissions—and when I speak of the “activities,” I mean many of the matters committed to their jurisdiction—which, of course, have no effect whatever upon interstate commerce or its regulation.

Senator WATSON. Yes.

Commissioner CLARK. In the matter of rates there come instances of conflict if the State prescribes a lower scale of rates than the interstate rates; and we have been called upon in a great many instances to exercise our power to remove alleged undue prejudice arising from

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that, and in some instances we have had to exercise that power. Now, we are all learning out of the experience of these days and, we have rather an abiding faith that with a spirit of coöperation—not to delegate our power at all, or to redelegate that which has been delegated to us—if we could be authorized to coöperate with the State commissions, and in some of these matters to utilize the State commission's services it would build up a spirit of coöperation and a unity of work that would necessarily bring about a unity of purpose and eventually overcome most of these difficulties. It might not entirely do so, but we think it is well worth trying, and that it promises good results. We think that the same spirit is entertained by a great majority of the members of the State commissions, and we believe that they would enter cordially into a plan or effort of that sort.

Senator POMERENE. May I ask just one question? Mr. Commissioner, you have made certain well-defined suggestions here to the committee, and through the committee to the Congress, as to certain regulations and changes in regulations. I do not understand that your commission expected the Congress to take five years to consider them before acting upon them?

Commissioner CLARK. No; we had no such idea, Senator.

Senator POINDEXTER. What is your view, Mr. Clark, about subcommissions, or a division of the Interstate Commerce Commission into a number of subordinate

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bodies, subject, of course, to the control of the central body, distributed over the country in regions, or with respect to systems of railroad, so as to increase the ability of the commission to deal with the vast problems that are under its jurisdiction?

Commissioner CLARK. Why, Senator, I have found one particular difficulty in bringing my mind to favor that plan, and that is the practical impossibility of regioning the country in a way that would not separate carriers' lines, or what are natural traffic territories; but those difficulties are not insurmountable. The virtue, as I see it, of that plan would be to bring the members of the commission in the various regions more directly in contact with the people whose business they were really handling. Necessarily, the central body would have to exercise careful scrutiny of the decisions of the subordinate commissions in the regions in order to preserve that degree of uniformity which the Supreme Court and others have al-[259]ways recognized as the particular purpose of the act to regulate commerce.

The CHAIRMAN. Mr. Commissioner, we would like to have you appear again to-morrow, because we have not quite completed the questions we wanted to ask you, and the hour for our recess having arrived, the committee will stand adjourned until to-morrow morning.

(Whereupon, at 12 o'clock noon, the committee adjourned to Wednesday, January 8, 1919, at 10 o'clock a. m.)

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[261] WEDNESDAY, JANUARY 8, 1919.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, in room 410, Senate Office Building, at 10 a'clock a. m., Senator Ellison D. Smith (Chairman) presiding.

STATEMENT OF MR. EDGAR E. CLARK—*Resumed.*

The CHAIRMAN. Mr. Clark, you may take the chair, and resume your statement.

Commissioner CLARK. I presented yesterday, Mr. Chairman, some figures which you have now had printed. I wanted to comment on those figures, simply to explain one rather abrupt increase, or decrease, as you may call it, in the amount of dividends.

In 1912 the amount paid in dividends was, in round numbers, something over \$400,000,000; and in 1911 it was \$460,000,000. Now, in 1911, the Oregon Short Line Railroad Co. declared a dividend of 68.68 per cent. on \$100,000,000 of stock; and in 1912 they declared a dividend of 10 per cent. The Houston & Texas Central Railroad Co. in 1911 declared a 20 per cent. dividend on \$10,000,000 of stock; and in 1912 nothing.

The Chicago, Milwaukee & Puget Sound Railway Co. in 1911 declared a dividend of 5 per cent. on \$100,000,000, and nothing in 1912. Those facts account for a very substantial part of that \$60,000,000 fluctuation.

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Senator POMERENE. Was there any special reason for those differences in dividends there?

Commissioner CLARK. We are not advised as to that, Senator. We simply have the report of the action.

Senator POMERENE. I see.

Commissioner CLARK. The decline in 1915 compared with 1914 is, we think, largely explained by the fact that the Union Pacific Railroad Co. in 1914 paid extra dividends amounting to \$74,020,372.

Senator WATSON. Let me ask you a question brought out by the interrogation of Senator Pomerene. You say that if a railroad company declared a good dividend one year and nothing the next year, you did not examine into the cause of that? You only took the fact?

Commissioner CLARK. We might have had some occasion, in an individual case, to inquire into it, but unless there was some special reason for it, we did not.

Senator WATSON. It was not the policy of the Commission, then, to inquire into the payment of dividends?

Commissioner CLARK. No.

Senator WATSON. Whether large, small, or nothing?

Commissioner CLARK. No. The railroad companies, according to the judgment of their boards of directors, pass their dividends and utilize the funds for investment in property, sometimes. The commission has no powers to direct in any measure what the dividends shall be.

Senator WATSON. No.

Commissioner CLARK. And we simply take these figures

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from their reports. All of these facts are stated in their annual reports to the commission. I do not know, Mr. Chairman, but what, before I resume comment on some features of the paper, I might present some figures which, as I said yesterday, I had had prepared, as responsive to questions that were asked the Director General, and as to which he did not have the information.

We get informally each month from the president of the Railway Car Manufacturers' Association a statement of the cars built and the orders for cars unfilled, and a comparison of those figures for the respective months of 1918 with one-twelfth of the annual output of 1917 has been made, and I have had a compilation of those figures made by months, from January to November, inclusive.

Senator POMERENE. Of 1917?

Commissioner CLARK. For 1918, compared with one-twelfth of the annual output of 1917.

Senator POMERENE. I see.

Commissioner CLARK. The output of 1917, averaged by dividing the total by 12, shows an output of freight cars of 10,295 monthly. The output for 1918 was smallest in April, when it was 5,829; and it ran along at 6,000, 7,000, and 8,000 each month, except in March, when it was slightly over 10,000.

The CHAIRMAN. What was the average for the months in 1918?

Commissioner CLARK. Seven thousand six hundred and seventy-seven was the average monthly output of freight

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cars in 1918 for the 11 months, and the average for 1917 was 10,295. The average monthly output of passenger cars in 1918, for the 11 months, was 74; and the average monthly output for the year 1917 was 135. I will file this statement.

The CHAIRMAN. Yes; let it go in.

(The statement above referred to appears in full below, as follows:)

[263] EQUIPMENT STATISTICS.

[Compiled from figures submitted by Prof. E. F. Goss, President Railway Car Manufacturers' Association.]

Monthly output of cars during 1918 in comparison with monthly output for 1917; monthly figures for 1917 based on one-twelfth of total output for that year. Figures are for first 11 months only.

Month.	Output.				On order and undelivered at end of month.			
	Freight.		Passenger.		Freight.		Passenger.	
	1918	1917	1918	1917	1918	1917	1918	1917
January	6,812	10,295	51	135	73,042	.....	575	.....
February	8,757	10,295	62	135	64,689	.....	513	.....
March	10,322	10,295	253	135	62,260	.....	643	.....
April	5,829	10,295	40	135	51,507	.....	388	.....
May	8,551	10,295	127	135	144,904	.....	487	.....
June	8,042	10,295	52	135	136,936	.....	514	.....
July	7,419	10,295	123	135	139,821	.....	332	.....
August	7,064	10,295	33	135	162,027	.....	361	.....
September	6,095	10,295	31	135	162,285	.....	336	.....
October	7,107	10,295	33	135	191,093	.....	303	.....
November	8,945	10,295	24	135	183,891	.....	.....	.....
Total	84,443	113,245	809	1,485	.....	.....	.....	.....

Estimating December output for 1918 as one-eleventh of total for 11 months produces the following figures:

	Freight cars.		Passenger cars.	
	1918	1917	1918	1917
.....	92,124	123,540	883	1,620
Monthly average	7,677	10,295	74	135

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Senator WATSON. How about locomotives, Mr. Clark?

Commissioner CLARK. We have no such reports as to locomotives; Senator, and no such complete or accurate information. This information as to cars is from the source which I have indicated, and that includes all, or substantially all, of the manufacturers in the United States.

Senator POMERENE. Is there any special reason why you should keep that account with regard to freight cars and not with regard to locomotives?

Commissioner CLARK. We do not keep that account, Senator. I said that the president of this association of manufacturers sends it to us informally, as a matter of information. He sends that statement in detail each month, and I have taken his monthly statements and recapitulated them in condensed form.

Senator POMERENE. I see.

Commissioner CLARK. There has been a good deal of discussion about the financial results from operation, and a comparison of those for 1917——

[264] Senator WATSON (interposing) That is, under governmental operation?

Commissioner CLARK. Yes; and the suggestion was made by some one that it would be interesting, if not illuminating, to draw a comparison of the results under Federal control with the average of the three-year test period.

I have, therefore, had made a statement from the reports

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of the carriers, showing for each of the months from January to and including October the items which make up the revenues from railway operations.

Senator WATSON. That is, January to October of 1918?

Commissioner CLARK. As compared with 1917, and as compared with the average of the three years included within the test period.

Senator WATSON. What was the date of the taking over of the railroads in 1917?

Commissioner CLARK. January 1.

Senator WATSON. It was on the 1st day of January?

Commissioner CLARK. Yes.

Senator WATSON. I had forgotten the date .

Senator POMERENE. It was 1918?

Commissioner CLARK. Yes. They actually took physical possession of them the 28th day of December, 1917, but in an accounting sense it was January 1, 1918.

Senator WATSON. So that the whole of 1917 was under private management?

Commissioner CLARK. All of 1917 was under private management and the 10 months of 1918 shown were under Federal control, and that statement is made up by months. It will show for itself how it averages, and it really does not convey any special new information, except the average of the three-year test period, which has not been compiled before or presented.

In that connection, in order to make my own position in the matter entirely clear, I want to say that I do not

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think that the comparison with the average of the three years during the test period approximates very closely a fair comparison with the corresponding months in 1918, and for this reason: During a very substantial part of the year 1917 we were actual belligerents in the war. The carriers had been obliged to make substantial increases in wages and to meet very largely increased costs of fuel and other supplies. They had applied to the commission for general increases in their rates; the carriers in the eastern district were accorded that 15 per cent. increase about the middle of the year, and the stress of operation was great on account of the war conditions. Without attempting to recite all those difficulties I simply point out that during the very substantial part of 1917 the carriers were operating under war conditions and under increased wages, necessitating increased rates, all of which conditions were reflected in perhaps a more acute way in 1918, so that I think that the nearest approximation to a fair comparison that can be found is the respective months in those two years. Of course, some of those months in 1918 are affected substantially by the fact that in that month they took into account payments made for back wages, with the result that in June the operating expenses were something over 110 per cent of the revenues.

[265] Senator CUMMINS. Mr. Clark, in order that I may bear it in mind, if I should want to ask you some question about it hereafter, does the table to which you now refer show the aggregate operating income—the

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total operating income of all the railroads reported to the Interstate Commerce Commission?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. For the three-year period—the average of the three-year period?

Commissioner CLARK. It shows the average for each month for the three-year period.

Senator CUMMINS. What is the total average? Is that footed up? What I want to know is what is the amount of the guaranty?

Commissioner CLARK. Yes; the statement is here for the 10 months ending with October.

Senator CUMMINS. No; I am speaking now of the average operating income for the three years that were taken as a test in the present law.

Commissioner CLARK. The average monthly income was, for that period, \$229,681.

Senator CUMMINS. The monthly income was \$229,000?

Commissioner CLARK. The average for the three years.

The CHAIRMAN. You mean \$229,000 for all the roads?

Senator CUMMINS. \$229,000,000, I should think.

Senator WATSON. That can not be right, Mr. Clark.

Senator CUMMINS. I will withdraw the question.

Commissioner CLARK. Excuse me. I was looking at the mileage operated. That was my mistake. The railroad operating income average was \$779,694,244, as shown in the statement at the end.

Senator CUMMINS. The statement does not show, then,

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what we really have agreed to pay or guaranteed in the way of an operating income?

Commissioner CLARK. Substantially the figures that I have just stated.

Senator CUMMINS. For all the railroads?

Commissioner CLARK. Yes.

Senator CUMMINS. How much?

Commissioner CLARK. \$779,694,244.

The CHAIRMAN. That is, per month?

Senator CUMMINS. Oh, no.

The CHAIRMAN. That is for the entire time?

Commissioner CLARK. That is the average for the 10 months. The average of the three-year period——

Senator CUMMINS. I am not speaking of the 10 months. I am asking, according to the test period, what have we agreed to pay per year?

Commissioner CLARK. Well, I have not those figures exactly, Senator.

Senator CUMMINS. He has given the amount we would have to pay for 10 months. I was wondering whether he had it for the whole year?

Commissioner CLARK. No; that has not been figured.

Senator CUMMINS. I want to know how much we are to pay for the year 1918.

[266] Senator WATSON. It is a little over \$900,000,000.

Commissioner CLARK. I have not those figures for any period except for the 10 months, because all of these figures have been made on the basis of a comparison of

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the 10 months of Federal control with the corresponding period of the previous year, and any statement which we might make from the reports of the carriers to us as the aggregate and the average railway operating income for the year or 12 months of the test period would not be exactly what the Government has obligated itself to compensate them for, because our figures would include carriers that were not taken under Federal control and as to which there was no guaranty.

Senator McLEAN. The Director General, in his statement, insisted that these figures, whatever they might show, would not be a fair test, because the conditions, under any circumstances, were so abnormal, and that consequently the entire experiment should be continued, in his opinion, five years. What do you think of that?

Commissioner CLARK. I certainly would not be reckless enough to say that the conditions were not abnormal. They were abnormal. The conditions were abnormal in 1917—very much so—and therefore I say that the nearest approximation that we can reach to a fair comparison of the results from operation are the figures for 1918, compared with the corresponding months of 1917; but we are not impressed with the idea that the Congress will get any great fund of information and experience that would be helpful in a final solution of this by extending the experimental period of the present form of Federal control for five years.

Senator McLEAN. Do you think that six months or a

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year longer would be sufficient for Congress to get possibly all the information that would be of value?

Commissioner CLARK. I hesitate to express an opinion as to how long it ought to take Congress to get the information it wants, and to make up its mind with regard to it; but with all due respect, my judgment would be that within one year the Congress could gather all the information that it is possible to gather, and probably legislate or put into legislative form the policy which it will adopt for the future. I do not see that continued Federal operation in this present form would cast any illumination upon these other considerations.

Senator McLEAN. That is what I wanted to develop.

Commissioner CLARK. We all have our individual ideas as to what the situation would probably be at the end of the five-year experiment.

Senator UNDERWOOD. The question of continuation of Government operation, or the continuation of the present administration, is merely a question of operation. That is the only thing it determines, is it not?

Commissioner CLARK. I think so.

Senator UNDERWOOD. And the operation is in the hands of the same kind of railroad men that it was before the railroads were taken over—there is no difference in the class of men who are operating the railroads now and those who were operating them when the Government took them over, is there?

Commissioner CLARK. No; the actual operation is in

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the hands of men who have been in it for a good many years, and who were in it when the railroads were taken over, and, in the main, they are now [267] on the same properties they were employed on when the Federal control commenced. Of course, there is a difference in the direction and the source from which final determination emanates, and under Federal control a good many things can be done that could not be done by the carriers under private operation and management under existing law. Of course, what they might do under other laws has never been demonstrated.

Senator UNDERWOOD. All those matters relate to questions of operation, though, do they not?

Commissioner CLARK. Yes; and financing.

Senator UNDERWOOD. The only financing that is involved is the Government's pocketbook?

Commissioner CLARK. There is some advantage in having a revolving fund, even if it does not revolve.

Senator McLEAN. The present system is one which no one would believe could be made permanent with satisfaction, is it not?

Commissioner CLARK. I should think that was an accurate statement, Senator.

Senator McLEAN. And a year's time would be sufficient to get all the information that could possibly be gotten, for the purpose of framing a system which we hope might be made permanent, which would have some chance of being a solution of the problem?

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Commissioner CLARK. Yes; it is hardly to be hoped that we will be able to evolve a perfect system; but, as I have said, modification of legislative action probably, in different particulars from time to time may accomplish it.

Senator McLEAN. You stated yesterday that from 35 to 40 per cent. of the roads were not self-sustaining at the present time?

Commissioner CLARK. No; I did not say that. I said that the figures of their experience in the test period and their average annual railway operating income, as to a considerable number of roads, was a deficit, but I did not state the percentage of the roads.

Senator McLEAN. I thought you did.

Commissioner CLARK. No.

Senator McLEAN. Do you know the percentage?

Commissioner CLARK. No; I do not.

Senator McLEAN. Whatever that percentage is, it is a very important factor, is it not, in the solution of this problem?

Commissioner CLARK. I think so.

Senator McLEAN. Take, for instance, competing roads: I think you stated yesterday that you thought it probable that those roads would be absorbed; that is, that what we may call the poor roads would be, in time, absorbed by the large and profitable roads?

Commissioner CLARK. I said I thought it would be a sound public policy to permit that to be done, under

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proper public regulation, and under certain clearly defined terms and conditions, to be approved after full public hearing.

Senator McLEAN. Has not just that thing happened in England, for instance, where consolidations have been permitted?

Commissioner CLARK. I could not testify as to what has been done in England, Senator.

Senator McLEAN. That has been stated by, I think, Mr. Acworth, who is something of an expert in such matters.

[268] Commissioner CLARK. Yes; so I understand.

Senator McLEAN. That those weaker roads, where they are competing and where the rates could not be raised, have been absorbed, as Mr. Root said with regard to Cuba, "for having a nuisance value."

Commissioner CLARK. I have personally observed, through a good many years of more or less familiarity with railroad conditions in this country, a great many instances of a property struggling along in an independent and separate existence, unable to earn any profit, and barely able to earn operating expenses, and, therefore, of necessity furnishing a very poor service with very poor equipment on a very poor railroad, taken in by a large and strong system and promptly developed into a good railroad, furnishing good service, and I think that the public interest was thereby served. It was merged into a large, strong system. Standing on its own legs and dependent on its own resources and its own

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ability to finance itself, etc., it had yielded but a bare and meager existence, but when it became part of a large system it contributed fairly ratably to the revenues of that large system when the entire earnings of that system from traffic originating on that road were considered in connection with the entire service performed.

Senator McLEAN. Suppose we take a noncompeting road—a good road which has gone wrong, like the New Haven Road. I am receiving letters from the stockholders of that road; I live in that section of the country, and they are urging me to support Government ownership of all the railroads, their idea being that their stock will thereby be redeemed. Do you think there is very much prospect of that?

Commissioner CLARK. I can not conceive of that being possible if my understanding, which I think is correct in a general way, as to the conditions of that property is correct. In other words, it is my impression that if the Government were to acquire that property it would acquire it at something near its true value, and that the proceeds would not be sufficient to pay the obligations of the company which have preference over the stock.

Senator McLEAN. You think that if the Government should take that road there would not be very much equity for the stockholders?

Commissioner CLARK. That is my impression.

Senator McLEAN. Would it be possible to raise the rates sufficiently high to pay for the service, we will say,

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on some of the lines of the New Haven Road? Do you think that would be possible? I remember not very many years ago we were paying 3 and 4 cents a mile on the branch roads, and that was at a time when a dollar was worth twice as much as it is now. If we should keep up comparative values, we would be paying now 6 or 8 cents a mile on those roads, and I am sure that would not be popular. But would it be fair and possible, do you think, to raise some of those rates where they are non-competing, so that they would pay for the service?

Commissioner CLARK. Senator, I have an impression that the rates in New England are pretty high now. They have been increased several times. They were increased very substantially by authority of the commission shortly before Federal control came on, and since then another increase of 25 per cent. on those increased rates—substantially 25 per cent.—has been put on.

[269] Senator McLEAN. It is costing us 7 and 8 cents a mile to ride in a Ford car, but we are all riding in them. And the question is whether the patrons of the road would be willing to and ought not to pay what the service is worth, but I will not continue that.

Commissioner CLARK. So far as their willingness is concerned, I should say, judging from their expressions which they have always presented to the commission in connection with any proposed increase, there would not be an oversupply of willingness.

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Senator McLEAN. No; but if the service was worth it, do you think it would be fair?

Commissioner CLARK. Oh, I do not think that it is fair to draw any comparison between the cost of riding in a privately owned automobile and the cost of riding on a common-carrier railroad.

Senator McLEAN. No; that is true. It is simply a question of the ability of the person to pay; that is all. It might be used as an argument quietly.

Commissioner CLARK. The theory of common-carrier service in this country is that the carrier shall carry for all who offer, and the ability to pay is not a measure of the value of the service.

Senator McLEAN. Do you think the Pennsylvania Railroad or the New York Central Railroad could afford to pay more for the New Haven Railroad than the Government?

Commissioner CLARK. Oh, I would not undertake to express judgment on that. The New York Central Railroad does not need it; it has the Boston & Albany.

Senator McLEAN. Take the Pennsylvania. I understand they own a large block of the stock of the New Haven to-day. Do you think they could afford to handle it better than the Government and would handle it more economically and serve the public better?

Commissioner CLARK. So far as my personal opinion may be worth anything, yes. The Pennsylvania Railroad has spent a very large sum of money on the Long Island

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Railroad in making a connection with the New Haven Railroad for through service, and it would appear that the systems would link up very well.

Senator WATSON. Mr. Commissioner, Senator McLean was asking you a while ago about the percentage of the railroads that are in the hands of receivers. Some figures have been handed to me now which show that in 1916 there were 76,000 miles of railroad, or 26 per cent. of the mileage, in the hands of the receivers, and 40 per cent. of the stock was not paying dividends. Has that percentage increased in the 10 years from 1906 to 1916? Your figures applied, I think, to those 10 years.

Commissioner CLARK. I referred only to the two years 1906 and 1916, but the statement shows each intervening year from 1906 to 1916, inclusive, and it shows the mileage that was in the hands of receivers during each of those respective years. To what year did you refer?

Senator WATSON. Mr. Plumb has just handed me the figures which show that in 1906 only about 3 per cent. of the railroads were in the hands of receivers and in 1916 about 26 per cent. were in the hands of receivers.

Senator McLEAN. If that is so, do you think that fact would affect the credit of the prosperous roads?

[270] Commissioner CLARK. No; I do not think that the fact that certain impecunious railroads have been forced into bankruptcy affects the credit of a road that is financially sound and solvent.

Senator McLEAN. Take the steel industry or the tex-

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tile industry. If there were a constantly increasing percentage of concerns in those industries which were unable to make both ends meet, would not that affect the credit of those lines of industry somewhat?

Commissioner CLARK. No. I think the people who furnish the loans study the reasons for all of these things, and the fact that railroad properties go into receiver-ships in the manner in which the Rock Island, and the Frisco, and the Cincinnati, Hamilton & Dayton, and the Pere Marquette, and the Wabash & Pittsburgh Terminal—

Senator McLEAN (interposing). What is the average dividend for 1916, taking the good and bad roads together?

Commissioner CLARK. You mean the average amount of dividend on the stock that did pay dividends?

Senator McLEAN. Yes.

Commissioner CLARK. Six and forty-eight hundredths per cent.

Senator McLEAN. That does not include the roads that did not pay any dividends. What is the average for all?

Commissioner CLARK. Oh, I have not figured out what the amount paid in dividends would have been on all of the outstanding stock.

Senator McLEAN. It would not have been over 4 per cent., would it?

Commissioner CLARK. I have not made any figures on that. I do not know what the percentage would be, and I

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would not think that those figures were of any value, if you could get them, because, as I said yesterday, as to some companies there is a large amount of outstanding stock that never did represent any investment, and it never has paid, and probably never will pay, any dividends, and I do not think it ought to.

Senator McLEAN. Of course, if other industries were making very much larger profits, naturally capital would seek investments in those industries rather than in the railroads?

Commissioner CLARK. Capital seeking investment in railroads is controlled by one of two considerations: It is either invested as an investment, with a confident belief that it is a good investment, or it is invested on a bet—pure speculation.

Senator WATSON. That would happen only with a new line, would it not?

Commissioner CLARK. No, sir; it happens with regard to many of these lines. One man goes to a broker in New York and says, "Sell so many thousand shares of such and such a stock on my account," and another man goes to another broker and he says, "You buy so many shares of such and such a stock for my account." Now, if you call that "investment," it is investment for purely speculative purposes. It really is not an investment at all.

Senator WATSON. Well, of course, in that sense, Mr. Clark, all investment is speculative. A man does not

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invest in anything unless he thinks he is going to make money out of it.

Commissioner CLARK. But a man invests, Senator, in some things with the expectation of leaving his money there for a term of years and of securing a reasonable or acceptable interest on it during that period and feels certain that he is going to get his money back at the end of that period.

[271] Senator UNDERWOOD. Like investing in Government bonds.

Commissioner CLARK. Exactly. And another man buys a hundred shares of railroad stock without ever expecting to keep it——

Senator POMERENE (interposing). The same way that he plays poker.

Commissioner CLARK. Exactly, and when the time comes to settle he gets the difference between the purchase price and the sale price, although no stock has actually passed from one hand to the other.

Senator McLEAN. The prospect that railroad stocks would go up has not been very good for the last 8 or 10 years, has it?

Commissioner CLARK. That depends on what stock you are speaking of.

Senator McLEAN. Yes.

Commissioner CLARK. I think it has not been 10 years since the stock of the New Haven Railroad was selling at 250.

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Senator McLEAN. I think it is just about 10 years ago. Perhaps I had the period too long. Say five or six years ago. Nobody who pretends to be posted in such matters would recommend anyone to invest in railroad securities. Well, that is all; I do not care to pursue that any further.

Senator POMERENE. Mr. Clark, let me ask you a question. The Director General recommends the continuation of the present Government control for a period of five years. You stated a moment ago that you thought Government control for another year would be a sufficient length of time within which to perfect the changes which you recommended yesterday.

Commissioner CLARK. Yes.

Senator POMERENE. Now, assume, for the sake of the argument, that these railroads might be turned over in the immediate future, as was hinted they might be in the event the five-year control was not permitted by the Congress. Is there any reason why these reforms that you have suggested—and when I say “reforms” I mean both legislative and administrative—could not be carried out, even if the roads were turned back to the owners?

Commissioner CLARK. No; but the effect of them would be substantially less.

Senator POMERENE. What do you think would be the advantages of making these reforms, legislatively speaking, before the roads were turned back, and what would be the disadvantages if the roads were turned back immediately?

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Commissioner CLARK. If the roads were turned back immediately, without any of these legislative changes, they would be confronted with the limitations of the existing law, and would be unable to do promptly many of the things which I am certain they would do if the law were different. They would be unable to continue under private ownership under those conditions some of the advantages which we all admit accrue from unified operation under Federal control. There would be, I think, a great disturbance of financial arrangements; and a good many of these carriers, as I have been told, had their organizations substantially dissipated; and it would seem to me and it would seem to the commission that it is most desirable that these reforms be provided first, so that the carriers, upon the resumption of the operation of their properties, might have the ad-[272]vantages of them to start with. There is everything in getting started right in most anything in this world; and to put it concretely, I think if I had my way I would say, "This period of Federal control will terminate on a given date; these roads will be turned back to their owners under the laws as they are in the meantime formulated by the Congress," and I would fix the date far enough ahead, so that I would feel reasonably sure that the legislation could be enacted, and everybody would know when the roads were to be turned back and all of this uncertainty and all of this disturbance of the morale on both sides which we hear spoken of would be done away with.

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Senator POMERENE. Then it is your judgment that even if we do not extend Government control for five years the Director General ought to retain control of these roads for a reasonable length of time in order to permit Congress to effect these changes?

Commissioner CLARK. Why, Senator, as a sound proposition, and to speak with blunt frankness, I think that now the war is over the Congress ought to withdraw from the President the power to surrender these roads on an hour's notice and that Congress, which must determine the future policy, ought to say when they will go back to their owners.

Senator McLEAN. That is not easily done. You may have noticed in the papers of yesterday that the farmers of the country had a reconstruction convention, I think, in this city, and they unanimously adopted resolutions in favor of Mr. McAdoo's five-year extension, and you may have noticed that Mr. McAdoo three or four days ago gave a statement to the press that wages would not be reduced if the five-year period was continued.

Commissioner CLARK. I am not arguing that they would be reduced if it was not continued.

Senator McLEAN. I am speaking about the question of the ease with which the legislation could be secured. He also stated that 2,500,000 employees were very much pleased, and that they all have votes.

Senator WATSON. I am informed, Senator McLean,

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that that was an unauthorized statement about a resolution having been adopted by the farmers.

Senator McLEAN. Well, I noticed it in the *Star*, I think it was, last night. I know that a Mr. Baker, from Michigan, stated that the railroads ought to remain in the control of the Government, because beans which were selling in Michigan at 18 cents a quart were 50 cents a quart in Washington.

Senator TOWNSEND. I did not understand Mr. Baker to say that, Senator McLean. Mr. Baker's argument, as reported in the paper, was that the farmer ought to have a better show than he is having under present conditions.

Senator WATSON. Whatever it was, I understand it was unauthorized.

Senator McLEAN. The statement was that the increase in price was due to the transportation charges; and if you have the labor organizations and the farmers in favor of a 5-year period, the President, with his veto, will very likely be able to accomplish the purpose.

Senator TOWNSEND. The mere statement of the fact that you have made would show that Mr. Baker could not have been arguing in [273] favor of the retention by the Government, because these practices obtain under Government control.

Senator CUMMINS. I would like to assure the Senator from Connecticut that no one who has a right to speak for all of the farmers will assert that they are unanimous in favoring the extension proposed by the Director General.

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Senator McLEAN. Oh, I understand that; they are not now, but these things become popular somehow, and they are not understood.

Senator WATSON. Not very long ago the National Grange had its annual gathering at Buffalo, representing a million farmers, and there was a very large assemblage present, and without a single dissenting voice they passed a resolution unanimously against Government ownership, and there was not anything said about a 5-year extension at that time. I represent something of a farming constituency, and I have not found any farmers to be in favor of this proposed 5-year extension.

Senator McLEAN. I am very glad to hear the commissioner take the position which he has, and I hope the other members of the commission will realize that their duty—that those of them who believe as he does—will feel that it is their duty to corroborate his statement, because I think it is a matter of education, and it is very easy for propaganda taken up by the present administration to become popular, and when it does, you know, Congress for some reason or other is inclined to take the popular side—is apt to.

Senator POMERENE. The views that you have expressed here, as I understand, Mr. Commissioner, represent the views of the commission, save perhaps Mr. Woolley?

Commissioner CLARK. The paper which I read represents the unanimous views of the commission, except as they are departed from by Commissioner Woolley in his

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separate expression. It plainly states the view that it would be unwise to return these properties precipitately, and without paving the way with legislative action.

Senator UNDERWOOD. Before you conclude, I want to refer to a matter you had before the committee yesterday: The commission, as a whole, favored the permission of merger of various lines of railroad, as I understood you?

Commissioner CLARK. Yes, sir.

Senator UNDERWOOD. Now, am I correct in understanding that you favored a permissive merger, and not a mandatory merger?

Commissioner CLARK. That was our idea.

Senator UNDERWOOD. You do not propose that the Government should force merger?

Commissioner CLARK. No, sir.

Senator UNDERWOOD. But where it was agreeable to the small line, or the two lines, to merge under certain regulations, you favored the merger?

Commissioner CLARK. Yes.

Senator UNDERWOOD. Now, I want to ask you in reference to short-line roads. I think it is a very important part of this question for Congress to solve, and yet there are certain rights that ought to be protected. Now, if we allowed the merger by consent of the main trunk lines in a certain neighborhood, and they did not absorb in that merger the short-line feeders that were independent, what would become of those short-line feeders?

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[274] Commissioner CLARK. They would probably have a difficult existence, if not a short existence, as independent properties; but my own thought on that—and I hope the thought of the others—is that the Federal authority, whatever it may be, from which approval for a merger must be secured, after full hearing in a public way, would withhold approval from any such arrangement as you suggest. It was not our thought that it would be carried so far as to merge, for example, the Pennsylvania and the New York Central systems; but the main thought was the absorption of these other lines that you speak of, which are good feeders for the larger systems, and which, as parts of the larger systems, could be made very useful.

Senator UNDERWOOD. I think, in the main, your proposition is undoubtedly correct; but I think that in providing legislation we should endeavor to safeguard property interests, to keep them from being drowned. For instance, take two lines of railroad that are the main trunk lines carrying the traffic of the country; you may have a very successful short-line railroad that is running between them. Now, if those two lines are merged without any action whatever, except the distribution of freight, that short line could be drowned out.

Commissioner CLARK. It certainly could.

Senator UNDERWOOD. Now, what are your suggestions to the committee in case we should determine to follow your suggestion and to allow the merger of different

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lines, by consent; not compulsory, but by consent; what are your suggestions that we could put into that legislation that would protect the condition I spoke of?

Commissioner CLARK. I want, in making a suggestion, to disclaim any thought of what is frequently spoken of as a disposition on the part of a tribunal to extend its own jurisdiction; but assuming, for the purpose of answering the question, and illustratively, that the administrative power were lodged in the Interstate Commerce Commission; my idea would be that the general rule of law laid down by the Congress should be a rule allowing very wide discretion to the commission in administering it, and depending upon the commission's exercise of sound judgment in carrying out that policy, by withholding its approval in instances such as you refer to, where the approval would plainly leave an independent property stranded.

Senator UNDERWOOD. Now, I agree with you on the general statement of the proposition, but when you come to the details, my mind is not clear how it could be accomplished. For instance, suppose that we grant the right of merger, and the Southern Railway and the Seaboard Air Line conclude to merge, and, as a general proposition, it meets with the approval of the committee as a wise merger. Assuming that there is some short-line railroad running in between them, where it is merely a question of permissive merger, how would the commission, if it were passed up to them, so regulate this matter

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in allowing the merger of the two main-line railroads as to protect the short lines that were in that neighborhood, and keep them from being submerged?

Commissioner CLARK. If that short line appeared in the proceeding, which would be public, and presented the situation in which it would be left, and indicated its willingness to part with its property at a reasonable price, the commission could say to the Seaboard Air [275] Line and the Southern Railway, "Your proposition is all right, as far as it goes; but it does not go quite far enough. You can not merge your two properties and leave this other property outside, because it can have no existence except at your sufferance."

Senator UNDERWOOD. And, on the other hand, take the short line——

Commissioner CLARK (interposing). And, on the other hand, if the short-line railroad said, "We do not care to part with our property," I think it would have to stand by its election.

Senator UNDERWOOD. In other words, you do not contemplate in this merger the power being granted to the commission in the legislation directing the line of disposition of freight?

Commissioner CLARK. Yes; under the regulation of physical operation we do contemplate power in the commission or other appropriate authority to require coördination of facilities, terminals, or otherwise, where it

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is plainly in the public interest; but we have no idea of compulsory financial merger of separate entities.

Senator TOWNSEND. Why not, Mr. Clark, if it can be—I do not know whether it can be—but why not have some power to compel the proper disposition of these things?

Commissioner CLARK. It has seemed to me, and still seems, that the Government is powerless to require the persons in possession of that property to sell it to others on terms unacceptable to them, unless the Government exercises the power of eminent domain and condemns the property and then sells it itself.

Senator TOWNSEND. Is not that the large argument in favor of Government ownership and control—the disposition of these properties that otherwise, as Senator Underwood says, might be stranded?

Commissioner CLARK. Well, I had not understood it so. Of course, Government ownership of an individual line of railway is possible. Government ownership of a few of the strong lines would be possible; but I have assumed that if the Government undertook ownership of the railroads of the country, it would undertake it in a sufficiently comprehensive way so that it would not leave out the so-called “weak sisters.”

Senator McLEAN. The “weak sisters” certainly will not be any worse off than they are now.

Commissioner CLARK. There are some of them that could not very well be worse off.

Senator CUMMINS. Mr. Clark, I have in mind to ask

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you a few questions with regard to the subject, treating it a little more fundamentally. You have been a member of the Interstate Commerce Commission for about 17 years, have you not?

Commissioner CLARK. A little over 12 years, sir.

Senator CUMMINS. I thought it was longer than that. It has been during that time that the struggle for a general increase in rates has occurred?

Commissioner CLARK. Yes; I think that may be accurately said to have begun in 1910.

Senator CUMMINS. And you are familiar with the reasons which have been given by the railway companies for an increase from time to time?

Commissioner CLARK. Yes.

[276] Senator CUMMINS. I suppose that it may be accepted as true that transportation should be furnished to the people at the lowest possible cost consistent with fairness to the capital involved and to the compensation paid to those who operate the property?

Commissioner CLARK. And consistent with good service.

Senator CUMMINS. The two items of cost and transportation may be generally classified in this way, I assume: first, the capital charge, and second, the expense of maintenance and operation. Those are the two items of cost in transportation, are they not?

Commissioner CLARK. Yes; those are the two principal

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items, and they are the two items that must be met if operation is to go forward.

Senator CUMMINS. Yes. I do not know of any other items, but there may be. Now, I will exclude for a few moments the question of securing adequate facilities, the additions, betterments, and extensions that may be necessary from time to time to furnish adequate transportation, and look at the plant that we have that is devoted to that purpose:

The railroads have been claiming for years that the capital involved in the undertaking should be rewarded with a return of anywhere from 7 to 10 per cent. upon the value of the property which is devoted to the service, have they not?

Commissioner CLARK. Yes; they have preferred those claims.

Senator CUMMINS. We are paying now, or guaranteeing now, something like a billion dollars as a capital charge, are we not, under the law which is in existence for all the railroad companies in the country?

Commissioner CLARK. Yes; I think it may be accurately stated as a "capital charge," and if you will pardon me, I will say that since you asked me that question a few moments ago, I have received by telephone from the office the average cost per annum to the Government for the use of the carriers' properties, based on the Federal control act. It is \$929,966,992.

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Senator CUMMINS. That does not include, however, the roads which are not in Government control?

Commissioner CLARK. No.

Senator CUMMINS. And when you consider the capital charge which is being earned by those roads, it would amount, as a whole, to something like a billion dollars?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. And the proposal of the Director General, as I understand it, is to continue that capital charge for a period of at least five years? You understand it so?

Commissioner CLARK. I do.

Senator CUMMINS. The railroads themselves in their long hearings before you have insisted upon a much larger capital charge than that, as I remember the course of their arguments?

Commissioner CLARK. Well, I have never made any figures on that, Senator. We have had no such proceedings as involved all the railroads of the country.

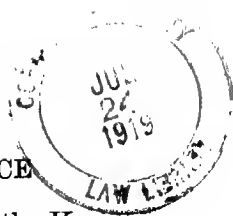
Senator CUMMINS. Can you give the committee any idea or fair estimate of the value of all the railroads in the country, as claimed by the railroads themselves?

[277] Commissioner CLARK. Yes; those figures are available. You mean the value of the property?

Senator CUMMINS. I do not mean the book cost, but I mean the value which they insist upon for their properties?

Commissioner CLARK. No; we have no such figures, and

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I do not think they are available anywhere. In the Kansas City Southern case, the valuation case which has been contested more vigorously than any other and which is now in the courts on a mandamus proceeding, the position of the company is that the value of that property is determined by capitalizing its actual and potential earnings, and that the value of the property is divided into tangible and intangible values. The tangible values are ascertained by actual inventory. Then they say the intangible values are the difference between the tangible values and the earnings of the company capitalized.

Senator CUMMINS. I assume that we can not arrive at a conclusion upon that subject with very much accuracy, in view of the stage at which the valuation proceedings now is, but it is perfectly safe to assume that the railroads are insisting that their property is worth more than the capitalization—about \$17,000,000,000, is it not?

Commissioner CLARK. I would not be justified in saying that they claim that. I have never heard any such contention on the part of the railroads, as a whole.

Senator CUMMINS. Well, the book value or cost of their properties, as shown by their reports, is more than their capitalization, is it not?

Commissioner CLARK. No; it is not quite as much, Senator. If you will look at this statement you will see that the amount of funded debt in 1916 was ten billion nine hundred and thirty-eight million and the amount of outstanding stock was eight billion seven hundred and forty-

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three million. That makes something over nineteen and one-half billion, and the book cost of the property for the same year was seventeen billion six hundred and eighty-four million.

Senator CUMMINS. However, the capitalization which you have just given includes what is known as duplicate or intercorporate capitalization, does it not?

Commissioner CLARK. Oh, it does, undoubtedly, include more or less duplication of capitalization.

Senator CUMMINS. And the commission has very often said that that duplicate capitalization amounts to two or three billions of dollars, I think.

Commissioner CLARK. It probably does.

Senator CUMMINS. So that if that amount were deducted from the total capitalization which you have named the net capitalization would not equal the book cost of the property?

Commissioner CLARK. On those figures it would be about equal—nineteen and one-half billion as compared with seventeen and one-half billion.

Senator CUMMINS. The way it looks to me is that when we are approaching a problem for the purpose of reducing, if we can in fairness to all the interests involved, the cost of transportation, the initial inquiry ought to be: "Is there any way in which we can reduce the capital charge?" Have you considered that question?

Commissioner CLARK. Why, yes; I have considered

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it; but I do not think that I have arrived at any conclusion that would enlighten the committee on it.

[278] Senator CUMMINS. Assuming that we are paying now—and I may say in passing that I think the sum is excessive—a billion dollars per year as a capital charge, if we could put the capitalization—all the capitalization—upon the basis of the bonds which are now outstanding, there would be a great reduction in the capital charge, would there not?

Commissioner CLARK. Yes; considering the stock and bonds as included in the word “capital.”

Senator CUMMINS. The railroads now have outstanding about 11,000,000,000 of long-time bonds, or, as it is called in your statement, “funded indebtedness”?

Commissioner CLARK. Yes.

Senator CUMMINS. That part of the capital bears, as I remember, an interest charge of about $4\frac{1}{2}$ or $4\frac{3}{4}$ per cent. Is that in accordance with your recollection?

Commissioner CLARK. I think that is approximately accurate; yes, sir.

Senator CUMMINS. If we assume that all the railroad property at this time is worth \$17,000,000,000, which I do not concede, nor do I controvert—I do not know, but it is somewhere in that neighborhood—a $4\frac{1}{2}$ per cent. capital charge would amount to about \$760,000,000 a year, would it not? That is a mere computation—and as compared with what we are now paying, it would mean a saving to the people of this country of \$250,000,000 a year, and

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as compared with the claim of the railroad companies for return it would amount to a great deal more than that, would it not?

Commissioner CLARK. Yes; if the reduction could be made.

Senator CUMMINS. Now, I do not intend to enter upon or to ask your opinion critically upon a method of reducing that capital charge, but it is quite apparent that there is a way in which it can be reduced, is it not?

Commissioner CLARK. I suppose there is, Senator. I suppose there is more than one way in which it could be done, but I have not given critical study to it.

Senator CUMMINS. If we could reduce it we would have made an advance in this problem or upon this problem that would result in a saving to the people of this country of anywhere from \$250,000,000 to \$400,000,000 per year, a thing that I think is well worth considering and conserving. I now go to the other item of cost, which is—

Senator SAULSBURY (interposing). Your proposition would not go to the extent of wiping out the stock of all the railroads all over the country, would it?

Senator CUMMINS. No; not at all. We neither have the power nor, I hope, the inclination to be in the least unfair to the capital involved. We would ascertain in some fashion the value of the railroad property as it now is, and we would represent it in some way with a form of security that could be disposed of at 4½ per cent. interest.

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Senator SAULSBURY. Your question of the commissioner seems to be whether it was not obvious that it could be done, and I thought you had an immediate answer, and I wanted to know what it was.

Senator CUMMINS. To me it is quite obvious that it can be done and that it ought to be done, with the result not only of absolute security to those who now own the railroad properties for the entire [279] value of their securities, but with a very great saving to the people of the country in the cost of transportation. But I pass that phase of the matter now and come to the other item of cost, which is the larger item, and possibly the more difficult item to deal with, namely, the cost of maintenance and operation. In this I am considering the plant just as it is, without provision for enlargement and betterment, those provisions constituting an entirely different phase of the matter. The two methods that could be adopted for operating and maintaining the property are: First, directly by the Government, with all the employees of the service Government employees; and the other is through the medium of private corporation. In your opinion, which is the most economical and efficient, Government operation or private operation?

Commissioner CLARK. I am of the opinion that private operation on the whole is the most economical; that it is more economical than Government operation would be.

Senator CUMMINS. Will you give me your reasons for that conclusion?

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Commissioner CLARK. I think that there is a larger incentive for saving and I think that there is less probability of expenditures for the purpose of meeting the insistence of residents of certain localities, etc.; and I think that private operation and control in any large industry is more apt to keep pace with and to adopt improved methods.

Senator CUMMINS. How much or what part of your conclusion is based upon political influence?

Commissioner CLARK. Well, in my judgment, that would have its play and would bring about expenditures that would not be made, in the absence of any pressure of that sort, by business men of good judgment, or a man in charge of the property, if he acted solely on his judgment as to the advisability of it as a business proposition.

Senator CUMMINS. There is no part of your conclusion based upon the opinion that compensation of employees ought to be reduced?

Commissioner CLARK. Oh, no; not at all, sir.

Senator CUMMINS. It is your judgment, as I gather, that for a long period of time railroad employees have been inadequately paid or compensated?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. And that the action of the Director General finally, but the wage board primarily, has not raised the compensation, other things being considered, beyond a fair point?

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Commissioner CLARK. Speaking generally, that is my view.

Senator CUMMINS. Yes.

Commissioner CLARK. There may be some individual instances where there ought to be adjustment. I do not know.

Senator CUMMINS. Yes. So that there is no probability that the wages of the men or the compensation of the employees, speaking of them broadly, will or ought to be reduced?

Commissioner CLARK. I think that is correct.

Senator CUMMINS. But I take it that it is your opinion that these employees will render better, more efficient service if they are employed by private corporations than if they were employed directly by the Government?

[280] Commissioner CLARK. I think that during a substantial period of Government ownership it would probably develop that that would be so.

Senator CUMMINS. Is that because of your observation generally with regard to work undertaken and carried forward by the Government?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. That in the greater number of instances it is somewhat wasteful and inefficient and extravagant?

Commissioner CLARK. It is very apt to get into a rut.

Senator CUMMINS. Have you any record of what it has

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cost the people of this country, as a whole, to do the work that has been done in the last year in railway service?

Commissioner CLARK. No, I have not.

Senator CUMMINS. There has been presented here, and I think you presented it, a table showing the cost of operation?

Commissioner CLARK. Yes.

Senator CUMMINS. For the last 10 months?

Commissioner CLARK. Yes.

Senator CUMMINS. How soon could you bring that down to include the entire year?

Commissioner CLARK. Why, I presume it would take two months, because we make it up from monthly reports.

Senator CUMMINS. There are but two months that are still out?

Commissioner CLARK. Yes.

Senator CUMMINS. Are the preliminary reports for December in the hands of the commission?

Commissioner CLARK. I do not think any of the December reports are in, Senator. I presume that a good share of the November reports are in.

Senator CUMMINS. Mr. McAdoo said that he would be able to furnish those figures immediately. Where does he get them?

Commissioner CLARK. I do not know.

Senator CUMMINS. Your reports will be based entirely upon the reports of the railway companies themselves?

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Commissioner CLARK. That is correct.

Senator CUMMINS. And not from any report that has been made, or which is expected to be made by the Railroad Administration

Commissioner CLARK. Yes, sir.

Senator CUMMINS. Have you any way of ascertaining what it has cost us to operate the railroads, in so far as the administration is concerned? I mean, the expenses that have not been reported to you by the several railroad companies?

Commissioner CLARK. I understood, from what the Director General said the other day, that the expenditures of the central organization here at Washington had not been included in the statements of operating expenses, and we have no information whatever as to those expenses and no means of securing it, unless by request upon him.

Senator CUMMINS. What part of what might be known as the regional expenses is included in the reports of the railway companies? Is the salary of the regional director included?

Commissioner CLARK. I can not say with certainty, Senator, but my impression is that it is not. The figures which we have are made [281] up from the monthly reports of the carriers. Now, the regional director is as much the officer of one carrier in that region as of another, and I do not understand that they prorate his salary. I think that there might be some regional expenses

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common to all of the roads in the region that are not included in our figures.

Senator CUMMINS. So that all the expenses of the Government, whether in Washington or in the various districts, which are common to all the railroads of that district are not included in your report?

Commissioner CLARK. That is my understanding, Senator.

Senator CUMMINS. And you have no way of ascertaining what they have been?

Commissioner CLARK. None. That is, we have no more means of ascertaining it than any other citizen has.

Senator CUMMINS. Mr. Clark, you recognize, of course, that the great difficulty in the adjustment of rates in the past, or one of the great difficulties, has been that two roads which must do business upon the same rates can not do business with the same outcome; that is to say, the rates that will make one road rich will put another road into bankruptcy?

Commissioner CLARK. That would be so; yes.

Senator CUMMINS. And there was no solution of the problem under the existing law, was there?

Commissioner CLARK. Except as the commission has solved it by saying that it would not fix those rates on the basis of the cost of service by the shortest and best-equipped line, or the richest line, but would take into consideration the needs of the other line.

Senator CUMMINS. That is true; and that resulted in

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giving to one railroad more than it ought to have, viewed from the standpoint that I think most people occupy, and giving to another railroad less than it ought to have for its service, did it not?

Commissioner CLARK. I think so; yes.

Senator CUMMINS. Now, the only way in which that element in the former problem can be removed is by absorption, is it not?—combination of the railroads of the country?

Commissioner CLARK. That would greatly simplify it, because then they could utilize the most economical line, and still they would get the earnings of both.

Senator CUMMINS. And you are a thoroughgoing believer in the concentration or consolidation of the railroads of the country into comparatively few systems?

Commissioner CLARK. I am; yes, sir.

Senator CUMMINS. But you have no hope, have you, that the railroads will voluntarily enter into such consolidation, doing full justice to the smaller and weaker roads?

Commissioner CLARK. Oh, I think that there would be a very strong tendency in that direction and that it would gradually grow, and that there would be a very large number of absorptions and consolidations if it were permitted.

Senator CUMMINS. Why not do the thing which seems to be necessary, and that will help to accomplish the end we have in view, namely, adequate transportation at the

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lowest possible cost—and compel the consolidations which are necessary to bring about that result?

[282] Commissioner CLARK. I should not object to that at all, although, as I said in response to Senator Townsend's question, I have never considered it from that standpoint.

Senator CUMMINS. I think your answer was perfectly sound in one way, but it did not present an obstacle that could not be overcome?

Commissioner CLARK. Oh, no.

Senator CUMMINS. The very moment that the Government became the owner in any fashion of these properties, it could then divide them according to the views which you entertain and accomplish this end?

Commissioner CLARK. Yes.

Senator CUMMINS. Why should we not do it?

Commissioner CLARK. As I said, I have no objection to offer to that at all.

Senator CUMMINS. Do you not think it ought to be done?

Commissioner CLARK. I think it is a more direct way of reaching what I believe to be a desirable condition.

Senator GORE. Would not one trouble be that of buying something that a man did not want to sell—forcing a man to sell something that he did not want to part with?

Senator CUMMINS. The Government can always make a man sell, whether he wants to sell or not. It can not make him buy; but the alternative is, if we can not find

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anybody to buy we can operate the railroads ourselves—the Government can. So we are not without hope, even in that contingency. Now, I want to draw your attention to the existing law. Mr. McAdoo has urged that it be continued in operation for five years—and I suppose he meant five years after the treaty of peace; I think he meant until the 1st of January, 1924—with its provisions respecting compensation, its absolute power over rates, over the laws of the States, and so on. Has the commission ever had occasion to construe that law; I mean with regard to the power of the President over rates?

Commissioner CLARK. Yes, Senator; to this extent, that we have interpreted it in our minds for practical application. We have reached the conclusion that the Federal-control act confers upon the President power to initiate rates and that it deprives us of the exercise of the power to suspend rates so initiated by him; that it withdraws from us the power to investigate with a view to changing rates so initiated, upon our own motion; and, summed up, it limits us to consideration of those rates in instances in which they are complained of by parties at interest.

Senator TOWNSEND. After they have gone into effect?

Commissioner CLARK. Yes; after they have gone into effect.

Senator CUMMINS. I know you have construed it with reference to the power of the Interstate Commerce Commission over what might be called the “certificate of con-

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ditions" justifying a certain rate; but has this part of the law come under your consideration? Section 10 provides that carriers, while under Federal control, shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal law, or at common law, except in so far as may be inconsistent with the provisions of this act, or any other act applicable to such Federal control, or with any order of the President. Have [283] you held that the President may not only initiate rates and put them into effect immediately, but may set aside any law of Congress with regard to transportation or with regard to common carriers?

Commissioner CLARK. No; we have not assumed to formulate an interpretation of the provision of that act, which seems to be so broad as to confer, as a war measure, upon the President powers which are limited only by what he deems to be necessary, and to set aside other laws and orders, in so far as they are inconsistent with his orders. Now, whether or not an existing law would be inconsistent with such an order is a matter of judgment, on which we would not be authorized to pass, and we have had no concrete case which has brought that before us.

Senator CUMMINS. Later paragraphs in section 10 seem to give to the Interstate Commerce Commission the right to review a rate put in by the Director General. You have had no occasion to interpret that authority in

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connection with the general authority of the President to set aside all laws?

Commissioner CLARK. No; we have had a large number of cases before us in which the Director General has, by amendment to the complaint, been made a party defendant. We have decided several such cases, in which we have ordered changes in the rates, or in the rate adjustment, as initiated by the Director General. There has been, so far as I know, no resistance of any of those orders.

Senator CUMMINS. For instance, take the law relating to carrier liability for personal injury; the question has not been up before you in any way as to whether the President could set aside that law?

Commissioner CLARK. No.

Senator CUMMINS. Now, passing on to another part of the statute, there is a great deal that has been said here about the conflict between the State authority and the Federal authority, especially with regard to rates, and the commission has assumed, has it not, that the President has the authority to set aside all State laws or regulations of State commissions upon that subject?

Commissioner CLARK. We have assumed that this act gave him the power to prescribe the rates for intrastate traffic on roads under Federal control.

Senator CUMMINS. In that connection have you considered and passed upon section 15, which, as you may re-

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member, was added to the bill upon the floor of the Senate as an amendment. It provides:

That nothing in this act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States except wherein such laws, powers, or regulations may affect the transportation of food, war material, Government supplies, or the issuance of stocks and bonds.

I think the commission recognizes that a State, in fixing a rate for a common carrier, whether directly by the legislature or indirectly through a commission, is exercising a police power, does it not?

Commissioner CLARK. I so understand. That has been frequently mentioned in our conferences, and I have heard no dissent from it.

Senator CUMMINS. Then, if that be so, where does the Director General get the authority to set aside rates that have been established by the States, whether through legislation or through commissions? If that right is expressly reserved in the act under which the Director General is proceeding, where is the authority for doing that thing?

[284] Commissioner CLARK. I know of no statutory authority for the Director General doing anything, except the act from which you are reading.

Senator CUMMINS. The question that I have just suggested has not been before the commission, I suppose?

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Commissioner CLARK. No, sir. The question has been brought up, indirectly and informally, as to whether or not under that act the provision that the commission may review, upon complaint, rates initiated by the President, makes of the commission the sole tribunal to which complaint may go as to an intrastate rate, and we have a concrete case of that kind now before us and which we are investigating.

Senator TOWNSEND. From what State?

Commissioner CLARK. Illinois; the transportation of water.

Senator CUMMINS. That brings me to this question: We now have a limitation upon Government operation or possession of 21 months after the war closes. Do you think that for 21 months, or whatever period may elapse before final disposition is made of this subject, the President ought to continue to have the power to make rates and to put them into effect, beyond the intervention of the Interstate Commerce Commission

Commissioner CLARK. I see only one substantial reason to present in advocacy of the continuance of that power, and that is the argument that the Government has assumed the payment of compensation for the roads, and ought to earn that compensation from the operation of the properties if that can be done within reasonable limits.

Senator CUMMINS. But the Interstate Commerce Commission can represent the Government of the United

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States quite as effectually and quite as intelligently upon that subject as the Director General, can it not? Here are certain moneys that have to be earned, of course, and we must raise them in some fashion or other; but operating these roads as a war necessity and for war purposes, why should the rates imposed upon the people of the country be made sufficient to fulfill the guaranty that has been executed or which is to be executed for return?

Commissioner CLARK. Well, Senator, in considering the advisability of this unified control, under the exercise of Federal authority, I have always believed that it would result in the payment by the Government of important sums, which I think are a proper part of our war expenses.

Senator CUMMINS. Yes.

Commissioner CLARK. Now, I think the Government is going to have to make those payments in larger or smaller amounts, dependent upon conditions and circumstances.

Senator CUMMINS. Undoubtedly.

Commissioner CLARK. And whatever course is adopted, I do not believe that the Government will ever come out of this thing with enough earnings from these railroads to pay the obligations which the Government must meet as the result of its taking them over.

Senator CUMMINS. I agree that if the Government operates the roads, for any inefficiency or want of economy that may be found in that operation, I suppose the shippers will have to pay for it; but the roads being

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operated for war purposes, if they do not earn the [285] income that is necessary to make good the guaranty, it ought to be paid out of the Treasury and not extorted from the shippers of the country, ought it not?

Commissioner CLARK. Under those circumstances, it seems to me a very proper part of our war expenses.

Senator CUMMINS. And it is not likely that the Interstate Commerce Commission would adjust rates so that deficits which were occasioned by war movement would be taken from or made up by the shippers, is it?

Commissioner CLARK. We have never adjusted rates on any such principle.

Senator CUMMINS. That probably is one of the reasons that the Director General wants to continue the operation of these roads; at least, I can conceive that it would be very convenient for him to do it in that way.

Senator WATSON. How much does that involve, Senator?

Senator CUMMINS. It involves for this year about \$140,000,000, and what it will involve next year no human being can tell.

Senator GORE. You say that you have passed on a good many complaints in relation to rates initiated by the Director General?

Commissioner CLARK. I said we had had a good many complaints to which the Director General had, by amendment, been made a party.

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Senator GORE. Allowing some and disallowing others, I suppose?

Commissioner CLARK. Yes.

Senator GORE. Has there seemed to be any uniform objection raised to the rates initiated by the Director General? In other words, has the objection generally been that the rates are too high, or too low, or that they are thrown out of line with other rates?

Commissioner CLARK. The complaint against those rates is usually with respect to relative adjustments; and while not admitting that the rates as they now stand are reasonable per se, the shippers generally withhold objection to the level of rates. I think it is only proper to say that throughout this whole period there has been manifest a feeling of great loyalty on the part of the shippers of the country in accepting the rates and withholding complaints and objections to them, recognizing that they are a part of the war program.

Senator GORE. My theory is that the chief difficulty is in maintaining the relation to other rates, and I voted against giving the power to the Director General for that reason. I think the commission is better qualified to do that than the Director General or anybody else; and, for that reason, I wanted to know if you could state any common ground that seemed to characterize these complaints.

Commissioner CLARK. Those that we have decided have been of the character that I have suggested.

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Senator GORE. That is, with regard to the relative adjustment?

Commissioner CLARK. Yes; complaint against the relative adjustment of rates, and we have required readjustment which, in our judgment, made a fairer rate basis.

Senator GORE. That is what I thought.

The CHAIRMAN. Inasmuch as there were several members of the committee who desire to ask Mr. Clark some further questions, I would ask him to come back for a short while to-morrow morning, the hour for adjournment now having arrived.

[286] I would state that, not knowing whether the commission has any other member it would like to be heard, under the schedule that we have adopted, that after Mr. Clark's testimony, the railroads will be the next to be heard, and if Mr. Clark gets through to-morrow during the morning session, I hope the railroads will be prepared and have their witness here.

Mr. ALFRED P. THOM. Mr. Chairman, the first witness we will have is Mr. T. DeWitt Cuyler, who will find it absolutely necessary to be in Philadelphia to-morrow night; and I was wondering if it would be possible to make an arrangement whereby he may have three-quarters of an hour, or, say, an hour of to-morrow morning's session. We would like that, if it could conveniently be done.

Senator CUMMINS. I think that would be all right, if the other witnesses of the commission are here.

The CHAIRMAN. How would it do to set aside our regu-

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lar session to-morrow morning for the railroads, and have Mr. Clark subject to call by the committee later?

Senator CUMMINS. That is satisfactory.

The CHAIRMAN. Then, it will be so understood.

[298] The following statement was introduced by Commissioner Edgar E. Clark, of the Interstate Commerce Commission, in connection with his testimony given in the hearing held January 8, 1919:

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Monthly summary of revenues and expenses, 1918, 1917, and average of corresponding months in the three fiscal years constituting the test period. Large steam roads in the United States.

JANUARY.

	1918	1917	3-year average.
Average miles operated	232,849	231,858	229,900
Railway operating revenues:			
Freight	\$189,665,129	\$211,651,108	\$181,508,570
Passenger	66,467,628	59,418,166	51,583,694
Mail	4,575,990	5,441,955	5,061,481
Express	8,785,956	7,847,754	6,566,896
All other transportation	7,571,380	8,665,542	7,429,723
Incidental	8,752,071	7,624,233	5,996,966
Joint facility—Cr.	389,380	325,354	297,941
Joint facility—Dr.	123,766	130,365	112,325
Total	285,083,748	300,843,745	258,364,946
Railway operating expenses:			
Maintenance of way and structures ...	40,755,871	32,043,121	28,217,285
Maintenance of equipment	66,960,814	53,515,969	46,659,319
Traffic	4,912,701	5,324,127	5,081,818
Transportation	147,066,612	114,856,565	98,910,605
Miscellaneous	3,017,622	2,594,218	2,173,804
General	8,434,769	7,789,328	6,893,334
Transportation for inventory—Cr.	421,639	636,992	502,884
Total	270,756,750	215,486,356	187,382,282
Net revenue from railway operations	14,326,998	85,347,389	70,982,664
Railway tax accruals	14,684,639	13,708,362	12,379,619
Uncollectible railway revenue	42,778	51,485	44,029
Railway operating income	*400,414	71,587,542	58,559,015
Operating ratio	94.97	71.63	72.53

FEBRUARY.

	1918	1917	3-year average.
Average miles operated	232,887	231,847	230,047
Railway operating revenues:			
Freight	\$198,508,874	\$185,138,707	\$173,086,668
Passenger	62,260,049	52,400,863	46,812,237
Mail	4,373,656	4,192,730	4,650,467
Express	9,033,427	8,666,245	6,662,496
All other transportation	7,867,080	7,802,940	7,134,828
Incidental	7,349,433	6,958,635	5,599,009
Joint facility—Cr.	418,156	516,262	290,717
Joint facility—Dr.	126,814	113,985	100,178
Total	289,683,833	265,362,397	244,126,243
Railway operating expenses:			
Maintenance of way and structures ...	38,789,221	30,231,170	27,506,987
Maintenance of equipment	66,363,966	49,647,702	45,305,871
Traffic	4,570,160	5,203,003	5,031,107
Transportation	140,170,736	113,221,798	95,963,771
Miscellaneous	2,735,689	2,489,963	2,059,536
General	8,432,518	7,448,753	6,690,524
Transportation for inventory—Cr.	471,390	447,092	389,756
Total	260,590,900	207,795,297	182,168,038
Net revenue from railway operations	29,092,933	57,567,100	61,958,205
Railway tax accruals	14,630,828	13,664,826	12,298,290
Uncollectible railway revenue	45,996	40,759	49,662
Railway operating income	14,416,109	43,861,615	49,610,253
Operating ratio	89.86	78.31	74.62

*Debit.

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[299] *Monthly summary of revenues and expenses, 1918, 1917, etc.—*
Continued.

MARCH.

	1918	1917	3-year average.
Average miles operated	232,910	231,673	229,920
Railway operating revenues:			
Freight	\$259,588,843	\$227,271,167	\$200,886,785
Passenger	73,170,336	59,081,845	52,051,782
Mail	4,625,634	5,123,324	5,002,928
Express	9,577,710	8,501,812	6,944,564
All other transportation	9,446,257	9,156,433	7,970,938
Incidental	9,806,434	7,862,605	6,232,806
Joint facility—Cr.	430,151	323,000	291,682
Joint facility—Dr.	132,889	120,319	106,429
Total	365,912,476	317,149,867	279,275,047
Railway operating expenses:			
Maintenance of way and structures ...	43,805,888	35,358,498	31,319,878
Maintenance of equipment	73,849,923	55,295,596	48,881,934
Traffic	4,532,054	5,349,598	5,094,889
Transportation	150,166,420	123,185,005	101,882,900
Miscellaneous	2,982,641	2,681,219	2,197,271
General	8,565,106	7,782,183	6,914,686
Transportation for inventory—Cr. ...	473,846	603,650	489,535
Total	283,428,186	229,028,449	195,801,223
Net revenue from railway operations	82,484,290	88,121,418	83,473,824
Railway tax accruals	15,097,140	14,179,712	12,569,469
Uncollectible railway revenue	73,880	60,170	56,802
Railway operating income	67,308,270	73,881,536	70,854,553
Operating ratio	77.46	72.21	70.11

APRIL.

	1918	1917	3-year average.
Average miles operated	233,038	231,783	230,047
Railway operating revenues:			
Freight	\$263,757,312	\$227,943,184	\$197,400,104
Passenger	72,452,520	60,363,082	53,237,285
Mail	4,595,152	4,973,262	4,902,483
Express	9,529,186	8,564,590	7,143,426
All other transportation	10,092,773	9,490,733	8,073,132
Incidental	9,805,912	7,776,212	6,135,957
Joint facility—Cr.	524,804	337,184	307,043
Joint facility—Dr.	142,880	119,756	115,020
Total	370,614,729	319,328,491	277,104,409
Railway operating expenses:			
Maintenance of way and structures ...	46,906,769	38,651,179	35,889,458
Maintenance of equipment	73,155,347	54,495,310	47,650,823
Traffic	4,232,065	5,294,483	5,085,736
Transportation	145,474,141	119,176,186	97,446,955
Miscellaneous	2,973,136	2,743,159	2,202,082
General	8,348,290	7,788,276	6,940,133
Transportation for inventory—Cr. ...	434,293	520,927	488,022
Total	280,655,455	227,626,666	194,227,171
Net revenue from railway operations	89,959,274	91,701,825	82,877,237
Railway tax accruals	15,096,585	14,218,740	12,609,321
Uncollectible railway revenue	40,011	48,010	52,895
Railway operating income	74,822,678	77,440,075	70,219,021
Operating ratio	75.73	71.28	70.09

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[300] *Monthly summary of revenues and expenses, 1918, 1917, etc.—*
Continued.

MAY.

	1918	1917	3-year average.
Average miles operated	333,029	231,801	230,066
Railway operating revenues:			
Freight	\$262,767,806	\$251,929,055	\$211,627,494
Passenger	79,184,423	61,288,774	55,078,575
Mail	4,562,564	4,994,881	4,907,805
Express	10,232,560	8,878,007	7,401,021
All other transportation	10,331,685	9,979,850	8,650,664
Incidental	10,824,500	8,611,010	6,795,906
Joint facility—Cr.	491,220	349,598	304,261
Joint facility—Dr.	152,634	126,887	104,659
Total	378,242,104	345,904,288	294,654,669
Railway operating expenses:			
Maintenance of way and structures ...	49,810,046	41,060,849	37,818,858
Maintenance of equipment	74,704,753	57,877,063	49,389,720
Traffic	4,027,961	5,453,759	5,212,485
Transportation	146,488,732	124,180,933	99,892,186
Miscellaneous	3,111,318	2,721,831	2,256,078
General	8,470,987	7,965,578	7,028,420
Transportation for inventory—Cr. ...	591,494	573,097	591,434
Total	285,522,303	238,686,946	201,006,312
Net revenue from railway operations	92,719,801	107,217,342	93,648,257
Railway tax accruals	15,700,971	14,391,659	12,740,619
Uncollectible railway revenue	39,889	50,555	61,842
Railway operating income	76,978,941	92,775,128	80,849,308
Operating ratio	75.49	69.00	68.22

JUNE.

	1918	1917	3-year average.
Average miles operated	233,014	231,831	230,089
Railway operating revenues:			
Freight	\$262,427,783	\$247,318,427	\$207,972,817
Passenger	94,667,475	68,113,521	61,960,648
Mail	4,489,755	4,927,465	4,880,501
Express	9,660,579	9,345,141	7,847,677
All other transportation	10,750,176	10,634,087	9,134,793
Incidental	10,978,472	9,124,516	7,336,330
Joint facility—Cr.	489,300	333,949	326,106
Joint facility—Dr.	154,141	131,237	122,702
Total	393,309,379	349,669,869	299,355,672
Railway operating expenses:			
Maintenance of way and structures ...	67,691,061	41,246,833	35,045,906
Maintenance of equipment	106,396,321	55,599,056	48,223,228
Traffic	5,473,481	5,456,985	5,396,951
Transportation	238,416,885	122,990,034	96,855,506
Miscellaneous	4,164,830	2,803,174	2,358,141
General	13,405,801	8,173,739	7,373,826
Transportation for inventory—Cr. ...	452,074	687,975	858,240
Total	435,096,805	235,581,846	199,395,218
Net revenue from railway operations	41,786,926	114,088,023	99,960,454
Railway tax accruals	17,111,004	15,113,722	13,290,123
Uncollectible railway revenue	61,783	64,383	109,194
Railway operating income	58,959,663	98,909,918	86,561,131
Operating ratio	110.62	67.37	66.61

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[301] *Monthly summary of revenues and expenses, 1918, 1917, etc.—*
Continued.

JULY.

	1918	1917	3-year average.
Average miles operated	232,337	231,242	229,008
Railway operating revenues:			
Freight	\$327,151,575	\$241,556,482	\$180,928,448
Passenger	104,403,679	73,739,148	66,253,174
Mail	4,430,674	4,846,049	4,850,427
Express	8,512,912	9,059,920	6,451,545
All other transportation	12,091,375	9,900,839	7,937,147
Incidental	11,434,565	9,076,021	6,196,201
Joint facility—Cr.	523,511	352,764	294,551
Joint facility—Dr.	168,487	136,829	107,890
Total	468,379,804	348,394,394	272,802,601
Railway operating expenses:			
Maintenance of way and structures ...	53,904,452	40,740,529	36,788,228
Maintenance of equipment	82,953,281	56,068,842	45,141,477
Traffic	3,817,455	5,396,154	5,203,139
Transportation	164,127,135	125,116,519	97,744,349
Miscellaneous	3,393,576	2,873,008	2,271,775
General	9,022,888	8,298,248	6,477,512
Transportation for inventory—Cr. ...	474,949	683,922	601,680
Total	316,813,838	237,809,378	182,024,800
Net revenue from railway operations	151,565,966	110,585,016	90,777,801
Railway tax accruals	15,903,327	14,898,911	11,972,944
Uncollectible railway revenue	63,009	35,863	37,903
Railway operating income	135,629,030	95,650,242	78,766,954
Operating ratio	67.64	66.26	66.72

AUGUST.

	1918	1917	3-year average.
Average miles operated	232,866	232,202	229,125
Railway operating revenues:			
Freight	\$349,816,570	\$250,281,115	\$195,050,062
Passenger	113,651,976	81,923,003	67,930,428
Mail	4,474,822	4,830,148	4,893,938
Express	10,650,916	9,107,049	6,425,278
All other transportation	11,992,973	10,050,982	8,261,895
Incidental	11,794,533	9,769,008	6,347,297
Joint facility—Cr.	527,496	402,401	316,759
Joint facility—Dr.	149,694	140,105	115,294
Total	502,759,622	366,223,601	289,109,876
Railway operating expenses:			
Maintenance of way and structures ...	56,585,861	42,393,551	36,954,957
Maintenance of equipment	115,747,516	59,912,634	46,406,029
Traffic	3,517,908	5,609,413	5,087,297
Transportation	171,587,296	129,893,084	89,499,774
Miscellaneous	3,376,553	2,968,545	2,297,056
General	8,560,329	7,928,576	6,361,022
Transportation for inventory—Cr. ...	427,798	787,662	593,197
Total	358,987,65	246,918,741	186,014,943
Net revenue from railway operations	143,771,967	119,304,860	103,094,935
Railway tax accruals	15,596,969	14,774,952	12,197,598
Uncollectible railway revenue	51,907	57,017	99,528
Railway operating income	128,123,081	104,472,891	90,797,809
Operating ratio	71.40	67.42	64.34

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[302] *Monthly summary of revenues and expenses, 1918, 1917, etc.—*
Continued.
SEPTEMBER.

	1918	1917	3-year average.
Average miles operated	232,397	232,709	229,185
Railway operating revenues:			
Freight	\$341,058,242	\$242,174,017	\$204,216,062
Passenger	105,772,737	82,527,370	68,147,719
Mail	4,343,521	4,771,814	5,006,200
Express	13,731,911	9,402,030	6,742,274
All other transportation	11,332,528	9,856,985	8,398,165
Incidental	11,492,630	9,811,691	6,309,945
Joint facility—Cr.	508,211	395,986	315,821
Joint facility—Dr.	153,820	141,896	122,016
Total	488,135,960	358,798,497	294,013,270
Railway operating expenses:			
Maintenance of way and structures ...	59,962,827	40,658,262	36,264,529
Maintenance of equipment	117,967,295	58,375,169	46,342,787
Traffic	3,457,832	5,398,805	4,990,492
Transportation	176,977,007	129,430,372	90,755,549
Miscellaneous	3,429,153	3,067,763	2,244,571
General	9,171,061	8,112,884	6,512,337
Transportation for inventory—Cr.	360,275	721,574	754,380
Total	370,604,890	244,316,681	186,355,885
Net revenue from railway operations	117,531,070	114,481,816	107,637,385
Railway tax accruals	16,102,550	16,797,896	12,361,001
Uncollectible railway revenue	33,567	45,993	57,169
Railway operating income	101,389,953	97,637,927	95,239,315
Operating ratio	75.92	68.09	63.33

OCTOBER.

	1918	1917	3-year average.
Average miles operated	232,624	232,953	229,316
Railway operating revenues:			
Freight	\$364,345,144	\$271,395,058	\$218,355,052
Passenger	84,715,185	77,280,262	57,648,160
Mail	4,272,807	4,636,813	5,009,681
Express	12,630,018	9,212,441	6,881,596
All other transportation	11,773,692	10,067,416	8,602,776
Incidental	11,168,974	9,741,173	6,309,681
Joint facility—Cr.	524,371	384,885	314,434
Joint facility—Dr.	148,532	143,737	122,108
Total	489,332,259	382,544,311	302,966,272
Railway operating expenses:			
Maintenance of way and structures ...	63,660,493	40,490,983	35,758,493
Maintenance of equipment	118,801,741	63,895,847	48,002,112
Traffic	3,462,372	5,701,991	5,061,646
Transportation	185,133,534	139,351,458	95,209,812
Miscellaneous	3,304,741	3,010,315	2,175,009
General	9,588,742	8,409,243	6,604,490
Transportation for inventory—Cr.	579,057	802,618	635,021
Total	383,372,566	260,057,219	192,196,541
Net revenue from railway operations	105,959,693	122,457,092	110,801,731
Railway tax accruals	16,396,539	16,621,554	12,506,552
Uncollectible railway revenue	51,929	97,105	55,189
Railway operating income	89,511,225	105,768,433	98,239,900
Operating ratio	78.35	67.98	63.43

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[303] *Monthly summary of revenues and expenses, 1918, 1917, etc.—*
Continued.

TEN MONTHS ENDING WITH OCTOBER.

	1918	1917	3-year average.
Average miles operated	232,768	232,247	229,681
Railway operating revenues:			
Freight	\$2,818,178,627	\$2,357,337,826	\$1,971,081,580
Passenger	856,675,298	675,995,350	575,737,702
Mail	44,641,564	49,747,292	49,164,411
Express	102,568,529	87,602,865	69,088,757
All other transportation	108,591,198	95,929,935	81,593,592
Incidental	108,195,484	86,494,566	63,258,069
Joint facility—Cr.	4,883,234	3,525,549	3,059,415
Joint facility—Dr.	1,454,780	1,305,334	1,128,621
Total	4,032,234,144	3,355,328,079	2,811,804,907
Railway operating expenses:			
Maintenance of way and structures ...	521,591,085	383,027,441	343,064,279
Maintenance of equipment	897,206,220	564,834,375	472,004,305
Traffic	42,010,618	54,200,512	51,214,960
Transportation	1,666,399,250	1,240,877,509	956,161,406
Miscellaneous	32,485,831	27,954,528	22,235,323
General	92,082,032	79,749,836	67,796,289
Transportation for inventory—Cr. ...	4,689,107	6,467,277	5,904,151
Total	3,247,085,929	2,344,206,924	1,906,572,413
Net revenue from railway operations	785,143,215	1,011,121,155	905,232,493
Railway tax accruals	156,433,077	148,071,739	124,914,535
Uncollectible railway revenue	515,598	551,372	623,713
Railway operating income	628,194,540	862,498,044	779,694,244
Operating ratio	80.58	69.87	87.81

At 12.05 o'clock p. m. the committee adjourned until
Thursday, January 9, 1919, at 10 o'clock a. m.

[305] THURSDAY, JANUARY 9, 1919.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, in room
410, Senate Office Building, at 10 o'clock a. m., Senator
Ellison D. Smith (chairman) presiding.

The CHAIRMAN. The committee will come to order. Mr.

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Clark, you indicated that you desired to make some changes or corrections in your statement of yesterday.

STATEMENT OF MR. EDGAR E. CLARK—*Resumed.*

Commissioner CLARK. Mr. Chairman, I have learned that in some quarters the expression that I uttered yesterday to the effect that the Congress should determine the date for the return of these properties has been misunderstood or misinterpreted into a criticism of the action of the Congress in vesting that power in the President, or as intimating a lack of confidence in the exercise of that power by the President.

I want to make it entirely clear on the record that I had no such thought in mind. What I intended to convey—and I am sure the members of the committee so understood—was the thought that the Congress, being responsible for the future policy and for whatever legislation may be enacted, ought, as a good, sound proposition, also to determine the date upon which the Federal control should cease; and while I may have been unhappy in the words used, or in the manner of expressing it, I simply want to make clear that I only meant to suggest a sound policy of dealing with the matter, and independent of any feeling or thought of criticism or suspicion of anybody.

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[339] FRIDAY, JANUARY 10, 1919.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., Senator Ellison D. Smith, (Chairman) presiding.

The CHAIRMAN. The committee will come to order.

Mr. Clark, you may now continue your testimony before the committee.

STATEMENT OF MR. EDGAR E. CLARK—*Resumed.*

Commissioner CLARK. Mr. Chairman, I understood, when you adjourned the other evening, that some of the members of the committee desired to interrogate me further. When I presented the two memorandums from the Commissioners, I said that I would read them, and then go back and comment on them; but on looking over the record, I find that practically every subject on which I had intended to comment has been explored by inquiries from members of the committee, and, therefore, I do not think I care to add anything in the way of initial comment.

I have extracted from our annual reports, and from some of our reports in cases, expressions of the commission on the subject of supervision of securities, which may or may not be of interest to the committee, and which I will put in, or not, as you may wish.

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The CHAIRMAN. We will be very glad to have you put them in.

(The matter above referred to appears in full below as follows:)

EXTRACTS FROM ANNUAL REPORTS AND FORMAL CASES OF THE COMMISSION RELATIVE TO SECURITIES OF RAILROAD CORPORATIONS.

[Annual Report of 1908, pp. 84-86.]

“A second consideration which leads the commission to urge upon Congress provision for an authoritative valuation of railway property is the importance which the question of capitalization has assumed in recent years. No one at the present time can say whether railways are undercapitalized or overcapitalized; or, should objection be made to that way of putting the question, no one can say, with the information in hand, which of the roads are undercapitalized and which are overcapitalized. A valuation adequate to the problem in hand should not stop with the simple statement of an amount; on the contrary, it should analyze the amount ascertained according to the sources from which the value accrues, and show the economic character as well as the industrial significance of the several forms of value. In no other way is it possible to arrive at an intelligent understanding of that complex situation, suggested by the phrase ‘railway capitalization.’

* * * * *

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[340] "The problem of railway valuation touches the figure which should be allowed as a measure of the corporate investment placed at the service of the public; the problem of railway capitalization, on the other hand, as that word has come to be understood, pertains to the amount of securities that should be issued by a corporation and distributed to investors as the evidence and measure of their respective interests. What interest, if any, has the public in the amount and the kinds of securities issued by public service corporations?

"The reasonable limit of stock and bond issues, from the point of view of sound corporation finance, is plain. No conservative management will increase securities beyond the ability of assured earnings to support the increased interest charges or dividend payments. To go beyond this would be to enter the domain of speculation. There may be cases in which it is wise, even in the interest of investors, to draw securities against future expectations, but speaking generally, and from the public point of view, it is better that a corporation whose solvency depends upon the use of speculative securities should acknowledge at once the necessity of reorganization, rather than that the fund of the country's assured credits should be diluted by injecting into it paper of a speculative character. This assumption must approve itself to every observer of business conditions who appreciates the importance of a stable fund of business credits, and if Congress believes it within the sphere of the Government to take official

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notice of the distress and suffering incidental to commercial crises and business depressions, it can not proceed far along such a line of thought without being forced to recognize that the amount and character of corporate securities is an important element in the situation.

“The direct interest of the commission in the matter, however, arises from the fact that Congress has made this body a tribunal, when complaint is made, for inquiring into the reasonableness of railway rates. It has frequently been urged that capitalization exercises no influence upon rates, but such an assertion is at best a partial truth. When one holds in mind how persistently the courts oppose the enforced approach of railway tariffs to the line of confiscation; when one comes to realize how eager the carriers are to restore to their property accounts the value of the improvements of past years paid for out of revenues; when one clearly understands that so long as railways which operate on different levels of cost continue to compete for the same traffic, there must result a permanent differential profit to the more fortunate road; and, finally, when one reflects upon the fact that securities once issued are ordinarily beyond recall and beyond control, it is difficult to see how one can assert that the kind and amount of securities issued by a public service industry have no bearing on the problem of railway tariffs as that problem must be regarded by the commission and by the courts. It is in fact the

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setting in which the problem is most frequently submitted for judicial consideration.

“The commission desires to avail itself of this opportunity of expressing to Congress its judgment that some adequate method of Federal control over railway capitalization is required by the interests involved.”

[Annual Report of 1909, pp. 8, 9.]

“The need of exercising control over railway capitalization is again urged upon the attention of the Congress. Upon this subject, constantly increasing in importance, we can not better express our views than by quoting the following from our last annual report.”

(Here follows above quotation from 1908 report.)

[Annual Report of 1910, pp. 35-36.]

“We have set forth in previous reports the reasons which have actuated us in recommending reasonable control of railway capitalization, and without here repeating the same, we deem it proper to add that subsequent observation and experience confirm our conviction as to the wisdom and urgent need of proper legislation for this purpose.

“In view of the action taken by Congress in providing for a special commission for the investigation of the questions involved in the Federal control of the issues of stocks and bonds by interstate carriers, it may be proper, merely as a matter of information, to call attention to a few of the provisions in the uniform system of accounts

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promulgated by the commission which bear directly or indirectly upon the question in hand.

“First. The construction accounts promulgated by the commission lay down the rule that all charges to property should be the money value and not the [341] debt value of the transactions recorded. This means that so far as construction accounts are controlled by the commission’s orders, the “cost of property,” which is the first item on the asset side of the balance sheet, must be the cost in money and not the cost in debt. The beneficial effect of this rule is limited by the fact that the jurisdiction of the commission does not extend to construction companies, nor does there seem to be any feasible means, without further legislation, of controlling charges to the property accounts of a carrier which represent a lump sum for the purchase of constructed properties. Further legislation by Congress is required before the purpose of the rule above recited can be completely realized.

“Second. The accounting rules promulgated by the commission further provide that all additions and betterments, regardless of the source from which the money to pay for such additions and betterments may be derived, shall be made a charge to the property account. The purpose of this rule is to prevent the accumulation of what have sometimes been called “secret reserves” and thus obviate the danger of having these reserves restored to the books at some future time and made the basis of speculative manipulations.

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“Third. The accounting orders of the commission require that all additions and betterments paid for out of revenues rather than from the proceeds of securities sold should be set up on the liability side of the balance sheet as a specific item. This raises at once the question of the equity in the value of such improvements. Is this an equity of the stockholder or of the public? On this point the commission expresses no opinion; it does, however, in the system of accounts promulgated require that the amount of such improvements be separately stated in order that when the question of increased capitalization is under consideration, whether by stock dividend or otherwise, the amount involved will be a definite and not an uncertain amount.

“Quite a number of other points might be named bearing upon the general question of the control of the issue of stocks and bonds, but sufficient has been said to make clear the statement that the commission’s system of accounts has been drawn in full recognition of the possibility that it may be used in the administration of a law which shall give to some Federal body supervisory control of capitalization.”

[Annual Report of 1911, pp. 92-94, 96, 97.]

“In our last annual report we stated some considerations in support of Federal control of railway capitalization as follows :

(Here follows above quotation from 1910 report.)

“In regard to the control of capitalization the above

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reference to previous utterances of the commission may suffice. Pursuant to an act of Congress, the President has appointed a special commission to investigate the entire subject of railway securities. We are advised that the report of the railroad securities commission will be submitted to this Congress, and for that reason we refrain from a more extended discussion of the subject of capitalization in the present annual report.

* * * * *

“The act requires that the annual report shall contain such recommendations as to additional legislation relating to the regulation of commerce as the commission may deem necessary.

* * * * *

“6. To provide for the regulation and control of capitalization and suitable provisions for the valuation of railway property.”

[Annual Report of 1912, pp. 70, 71.]

“In previous reports the commission has called the attention of Congress to the desirability of legislation upon various subjects; among others, a physical valuation of railroads, a uniform classification, a more explicit definition of the authority of this commission over telegraph and telephone lines, and control over railway capitalization. We here renew our previous recommendations without taking time to restate the reasons already given.”

[Annual Report of 1913, p. 82.]

“In previous reports the commission has indicated the

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desirability of legislation upon the subject of control over railway capitalization. Without attempting to add to the reasons previously advanced, we renew those recommendations.”

[342] [Annual Report of 1914, p. 65.]

“For the reasons stated in our last and previous annual reports we renew our recommendations therein contained, to the effect—

* * * * *

“That there should be appropriate and adequate legislation upon the subject of control over railway capitalization.”

[Annual Report of 1915, p. 69.]

(Same as in report of 1914.)

[Annual Report of 1916, p. 92.]

(Same as in reports of 1914 and 1915.)

[Annual Report of 1917, p. 69.]

(Same as in reports of 1914-16.)

[Annual Report of 1918, p. 3.]

“If the policy of private ownership and operation under regulation is continued, the following subjects will require legislative consideration * * * (3) Regulation of issues of securities.”

[Consolidation and Combinations of Carriers, 12 I. C. C.,
277, 306.]

“The time has come when some reasonable regulation should be imposed upon the issuance of securities by railways engaged in interstate commerce. We are aware

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that in the construction of new lines of railway, developing new territory, it has been necessary in many instances to sell railway securities at large discount, and to sell bonds with stock bonuses, and even in such cases it has many times been difficult to raise the necessary capital. Men will not invest their money and take the risk for small rates of interest.

“But this principle does not apply to old established railway systems having good credit. Such railways should be prevented from inflating their securities for merely speculative purposes. Railroads should be encouraged to extend their systems and develop the country. It is of the utmost importance also that railway securities should be safe and conservative investments for the public, and should yield good and ample return for the money invested. Reasonable regulation will tend to make them safer and more secure investments, and thereby benefit not only the railway companies but the public.”

[The New England Investigation, 27 I. C. C., 560, 618.]

“In conclusion this commission desires to call attention to one lesson from this investigation of national application.

“No student of the railroad problem can doubt that a most prolific source of financial disaster and complication to railroads in the past has been the desire and ability of railroad managers to engage in enterprises outside the legitimate operation of their railroads, especially by the acquisition of other railroads and their securities. The

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evil which results, first, to the investing public, and, finally, to the general public, can not be corrected after the transaction has taken place; it can be easily and effectively prohibited. In our opinion the following propositions lie at the fountain of all adequate regulation of interstate railroads:

“1. Every interstate railroad should be prohibited from expending money or incurring liability or acquiring property not in the operation of its railroad or in the legitimate improvement, extension, or development of that railroad.

“2. No interstate railroad should be permitted to lease or purchase any other railroad, nor to acquire the stocks or securities of any other railroad, nor to guarantee the same, directly or indirectly, without the approval of the Federal Government.

“3. No stocks or bonds should be issued by an interstate railroad except for the purposes sanctioned in the two preceding paragraphs, and none should be issued without the approval of the Federal Government.

“It may be unwise to attempt to specify the price at which and the manner in which railroad stocks and securities shall be disposed of, but it is easy and [343] safe to define the purpose for which they may be issued and to confine the expenditure of the money realized to that purpose. That such a measure of regulation is necessary, and that it can only be administered through the

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National Government, is the necessary conclusion from the facts developed in this proceeding.”

[Financial Relations, etc., L. & N. R. R. Co., 33 I. C. C., 168, 172.]

“The above facts illustrate the manner in which permanent improvements on the Louisville & Nashville have in the past to a large extent been made out of earnings and subsequently charged to the capital account. As the commission in its annual reports has previously pointed out, only by the fullest publicity and public supervision of stock and bond issues may such increasing of the capital accounts of carriers at the expense of the public be prevented.”

[Financial Transactions, C., R. I. & P. Ry. Co., 36 I. C. C., 43, 61.]

“By this case the need of some limitations on the issuance of stocks and bonds by common carriers, whether directly or through holding company devices or otherwise, is again demonstrated.”

[Pere Marquette R. R. Co. and C. H. & D. Ry. Co., 44 I. C. C., 1, 222.]

“The exploitation in 1903, 1904 and 1905 of the Pere Marquette and the Cincinnati, Hamilton & Dayton was not an incident of railroad construction. The properties had long been established. Whatever control or regulation of the issue of railroad securities was exercised by the States in which these roads operate was inadequate to prevent the exploiting or to forestall subsequent hasty

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and unwise reorganization. To this extent that these flotations ultimately lodged in the hands of innocent investors, whether here or abroad, the public was deeply wrong. Whatever control or regulation was had of the properties and operations of the two roads was not sufficient to keep them in condition to satisfactorily serve the population dependent upon them. The result has been the same with each; financial disaster to the carriers, serious loss to the holders of their securities, deterioration of their physical properties, and a marked impairment of ability to perform their functions as public servants.

* * * * *

“Can the like of what has befallen these two roads be made impossible hereafter? Perhaps not entirely, so long as financial circles continue complaisant toward financial exploitations which prove successful. But it will help if minority stockholders are more watchful of their interests and if bondholders assert their rights before their security fades away for lack of upkeep, purposely neglected in order to pay interest and dividends unearned. It would, in our opinion, render such exploitation more difficult if the issuance and marketing of all securities of common carriers were subject to Federal regulation. As to that we renew the recommendations repeatedly made to the Congress in our annual reports.”

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[The Wabash Pittsburgh Terminal Investigation, 48 I. C. C., 96, 144.]

“This case illustrates again the great need for control of security issues and emphasizes the wisdom of the commission’s requirement, which has been in effect since 1907, that the charges to the accounts reflecting the carriers’ investment in road and equipment shall be based upon the cash cost of the property.”

[Proposed Increases in New England, 49 I. C. C., 421, 434.]

“Until this commission, or some other governmental body with adequate power, permanently controls the issuance of carrier securities, and, within reasonable limitations, the application of the proceeds thereof, stockholders and other investors in carrier securities are certain from time to time to be subjected to such perils of mismanagement and resultant losses as have accrued to the stockholders of the New Haven, the Rock Island, the Pere Marquette, the Cincinnati, Hamilton & Dayton, and others. We say this with reference to future conditions, not overlooking the adequate, but temporary, safeguards now obtaining under Federal control.

“After a railroad corporation like the New Haven and some of our other well-located and prosperous railroads has had a long career of business success, and reasonably safe management, its stock becomes widely distributed among [344] investors who pay little or no attention to guarding their investments. But this situation, fraught

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with grave danger to the investing public, is one with which the Congress must deal. As the law now is, this commission is powerless to afford any real remedy for past misdoings or in the future to protect other similar bodies of stockholders from depredations and losses of an analogous kind. We can do no more than investigate and condemn after the evil has been accomplished, and make a "report" of losses and sufferings which we were powerless under the law to prevent. Private capital invested in carrier companies can not be generally safe under such lack of security regulation as has existed prior to Federal control.

"This commission has frequently in its annual reports to Congress urged the necessity of remedial legislation along the lines indicated above."

The CHAIRMAN. Mr. Clark, complaint, or at least reference, was made yesterday to the delays of the Interstate Commerce Commission in passing upon certain rates and complaints which come before the commission. I would like for you to state to the committee why all these delays, which are said to be so vexing and disastrous, should occur, and what is your view with respect to a remedy for such delays.

Commissioner CLARK. I am reminded of a comment a gentleman made yesterday afternoon in argument before the commission. In answering the argument of the representative of the other side, said he was reminded of a headline in a London paper—"Important if true!" I

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will begin, Senator, by saying that if any tribunal, or even if an individual, is to pass upon the reasonableness and propriety of proposed rates before they are made effective, it involves necessarily time in which to present the opposing views and the facts, and time in which to analyze the record and to consider it; and the length of that time depends altogether upon the importance of the case.

The CHAIRMAN. Is your commission so organized that when these proposed changes in rates are presented to you, you address yourselves immediately to the subject?

Commissioner CLARK. We think that we address ourselves with reasonable promptness to it; and, with the exception of the Five Per Cent. case, I do not think there is any room to complain of delay on the part of the commission. That case did take a long time, and it took a very wide range. The commission determined to employ special counsel in that case, and a great many questions were brought in and investigated, and the proceeding was long, and it took a good while for the commission to decide it. That, however, has not been true of subsequent cases. The Fifteen Per Cent. case was not delayed by the commission. I think it was settled with as much expedition as could ever be expected in a case of that importance, and covering the field that is covered.

One great trouble with these things is the expression of opinion by people who do not base their opinions on knowledge of the facts or a consideration of anything but

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the thought uppermost in their minds at the moment. I have read in the morning expressions from the officials of railroads who were impatient at the delay of the commission, and on that same day have listened to appeals from counsel for railroads in the case in question for further time in which to prepare; so that it has two sides. But a tribunal that is charged with the responsibility of investigating and deciding a question of that kind must, necessarily, desire to do it right—to make its decision sound—and it seems to me as inconsistent to say that a tribunal [345] of that sort shall make a decision within a specified time as it would be for the Senate to tell this committee to make up its mind and report a bill on a given date. There will necessarily be some delays; and when I say “delays” I mean there will be necessarily a consumption of time in considering these questions, so long as there is to be an investigation of rates before they become effective, and the only way to avoid it is to abandon that effort.

The CHAIRMAN. You have been on the commission a good number of years, and your experience leads you to believe that there has been no unnecessary delay in the handling of these matters, does it?

Commissioner CLARK. Except as I have stated; and when I say “unnecessary delay” I do not mean to be understood as saying that the delay in the Five Per Cent. case was unnecessary. I think probably we made the mistake of carrying that matter out into branches of in-

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quiry that were not squarely at issue, and which did consume more time than we would consume again on a case of that kind.

Senator CUMMINS. The chief delay is the time consumed in getting the testimony in before you?

Commissioner CLARK. Yes, sir; the principal delay is in getting the case submitted.

Senator CUMMINS. And that time is consumed by the respective sides of the controversy?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. In endeavoring to inform the commission with regard to the facts?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. Of course, if one man decides a controversy without any hearing at all, he can decide it rather promptly?

Commissioner CLARK. Oh, yes.

Senator CUMMINS. And that reminds me. I refer you to what is known as General Order No. 28, which upset all the rates of the country. The Railroad Administration has been continuously engaged since that time in modifying and setting aside parts of that order, has it not?

Commissioner CLARK. Yes, sir; and that has been true in every case where any general increase in rates has been made in a hurry. I approved yesterday, or voted to approve, an application for authority to increase a rate to correct a clerical error which was made in establishing rates under our order in the Fifteen Per Cent.

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case; and the error was perpetuated by increasing it a percentage under the Director General's Order No. 28, and now it is discovered that a year or a year and a half ago there was a clerical error, which is now obvious. It was there all the time; but it had not been discovered. That is a very common thing, that we receive applications for the commission to correct clerical errors that have been in the tariffs for two years or more.

Senator McLEAN. Who is responsible for those errors?

Commissioner CLARK. The compilers of the tariffs. I am not speaking in criticism; but these questions are more complex and difficult than the average person appreciates. It is a very common thing for the carriers to require—and we recognize the reasonableness of the requirement—months in which to check out and file a re-adjustment of rates under an order of the commission.

[346] The CHAIRMAN. Mr. Clark, is it not true that the rate structure is so interrelated that any appreciable change in any rate situation affects all the rate structure?

Commissioner CLARK. Well, I would not say that it would affect all of them, Senator; but it is true that if you change the adjustment on one commodity, it frequently disturbs the adjustment on other commodities that are competitive and analogous. If you change the adjustment in one locality, it affects the adjustment in other localities.

The CHAIRMAN. That was the idea that I had in mind.

Commissioner CLARK. And speaking not as of the mo-

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ment, but under normal conditions, it was impossible to change a rate on grain between any two important points east of the Missouri River without affecting practically all of the rates on grain, because of the highly competitive condition and situation as between carriers and between grain markets.

Senator McLEAN. Mr. Clark, it has been generally understood that the Interstate Commerce Commission had so much to do that, of necessity, many important matters had to be postponed or delayed; and now there is a project for increasing the membership of the commission in order that the commission may be relieved, and that the work may be more expeditiously handled.

Commissioner CLARK. Yes; we requested an enlargement of the commission, coupled with authority to subdivide and to work in subdivisions, partially for that reason and partially, and very largely, for the reason that these valuation questions were coming on; and, as I said to this committee at that time, it was physically impossible for any man to perform the duties devolving upon a commissioner, under the prime and original purposes of the act, and at the same time to acquaint himself fully with the principles and details of valuation matters.

Whether or not there are enough commissioners; whether or not there are enough subdivisions at the present time, no one can say, because that plan has not had a fair try out. We ran into very abnormal conditions immediately after it was put into effect, and have been in

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them ever since. Now, that leads me to say that if the ideas which we have suggested here be adopted, and if the commission should be charged with any duty of supervision of capitalization, my own impression is that it would necessitate building up a new bureau or subdivision of the commission; because I think that is a subject to which a subdivision of the commission should devote its entire time and not have to think of anything else; and I think there would be enough applications to occupy fully their time; and, of course, like the matter of rate adjustment, no careful man or commission or subdivision of a commission would pass upon a question of that kind without going to the bottom of the facts, and without fully understanding what was proposed, and, so far as humanly possible, the future effect of it.

Senator WATSON. The commission now divides up into subcommittees?

Commissioner CLARK. Yes.

Senator WATSON. And the subcommittee hears and reports to the full commission

[347] Commissioner CLARK. No, it decides it.

Senator WATSON. The subcommittee finally decides it?

Commissioner CLARK. Yes.

Senator WATSON. I remember something of the discussion at the time.

Commissioner CLARK. That is, it is authorized to do so, and many cases are disposed of in that way. In a case involving some novel question not theretofore decided by

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the commission, the subdivision naturally says, "Here is a case upon which the commission ought to pass," and it is brought before the full commission.

Senator WATSON. The present railroad administration has a division of finance and purchase, one division of operation, one of traffic, and one to consider legal matters; one on labor, one on capital expenditures, and one on public service and accounting. What would you think of that kind of an organization, subordinate and subsidiary to the commission itself? For instance, a matter comes up having reference to finances. You have a man at the head of that particular department, under you—not on the commission, but subordinate to the commission—and he and his aides take up and consider that whole question and finally report to the commission, which finally decides it. Now, it occurs to me that the difficulty is not with the commission, or with the jurisdiction of the commission, but with the machinery of the commission. That is to say, that you have not enough machinery, or it is not, in some way or other, properly organized to secure the most effective results in the least time. Now, if that be true, would not some such organization as that be helpful to you?

Commissioner CLARK. I think so, Senator. The theory of the law, however, is that the commission shall decide these things—and the "commission" is, of course, the commissioners. It has been running in my mind that the proper way to deal with these various subjects is through

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subdivision, leaving the subdivision to which the subject is referred with power to deal with it; not only to investigate it and analyze it, but to decide it. That puts the responsibility for decision upon the man who does the investigating. If a small number of commissioners were charged with the responsibility of determining all these questions through subordinate officers, such as you suggest, it would be impossible for them to go into the details and to analyze each matter personally; and it would resolve itself, I am afraid, into the necessity for taking the judgment of that officer; while I think that the judgment of a subdivision of the commission that was studying that subject, would be better. And so my idea of the organization would be to have a subdivision of the commission that would deal with the questions of capital supervision, etc., and decide them, subject to appeal to the entire commission.

The CHAIRMAN. Mr. Clark, do you think that a division, or the creation of regional commissions, something after the manner of the circuit courts—not for them to move from one section to another, but dividing the country up into subdivisions, regional commissions—do you think that would be helpful?

Commissioner CLARK. I have never thought so, Senator, and for this reason: The Supreme Court of the United States has pointed out in a most emphatic way that the underlying and controlling purpose of the act to regulate commerce is to secure uniformity of treat-

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ment of patrons of the railroads, and that there is a necessity of uniformity there that does not present itself in the average litigation in the courts.

Senator POINDEXTER. Do you have reference to any particular case there?

Commissioner CLARK. I can give you the citation to that case. I do not have it in mind at the moment. There are some others of the commission around here who, perhaps, can give it to you. I refer to the case in which the Supreme Court, as said by some, read section 9 out of the act.

Senator POINDEXTER. I would like to have that reference.

Commissioner CLARK. I will be glad to furnish that, Senator, *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.* (204 U. S. 426). I can not think, for the moment, of the title of the case. The court said that this necessity for uniformity was such that, under the act to regulate commerce, the courts could not determine questions of fact; they could not substitute their judgment for that of the commission; and they, in effect, said that appeals from the decisions of the commission could be on but three grounds: First, has the commission proceeded in a lawful way and given the full hearing required by the law? Second, has the commission—

Senator POINDEXTER (interposing). Exceeded its jurisdiction?

Commissioner CLARK. Has the commission exceeded its

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jurisdiction, or has the commission decided in such arbitrary way as to shock the sense of justice?

The CHAIRMAN. My idea was this, Mr. Clark——

Commissioner CLARK. If you will pardon me just a moment, I want to pursue that, Senator, a little bit further. In the case of ordinary litigation in the courts—and I am speaking of civil cases—it is a question of rights or equity, as between individuals. In administering this act to regulate commerce, it is a question of the rights of the whole public. An individual shipper can come before the commission and complain of a single rate. Now, that is not simply a question as between that shipper and that railroad, but it is a question of what is a reasonable rate for anybody and everybody who wants to ship that commodity between those points.

So that there is that distinction, and that necessity for uniformity, which, to my mind, is an objection against distributing the jurisdiction of these questions among regions. Of course, the difficulty is not insuperable, because a central body which would have appellate jurisdiction would probably take upon itself the initial duty of carefully watching all of the decisions of the regional commissions, in order to detect conflict between them, and would bring before it, on its own motion, two cases in which there had been conflicting decisions, so as to resolve the conflict; so that is not an insuperable difficulty.

It was suggested yesterday, as I gathered from the questions and answers, that the regional plan might be on

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the basis of the three great classification divisions, and, in the same connection, it was suggested that there should be on the regional board a representative from every State included within the region; and that was connected with criticism of the Interstate Commerce Commission about [349] delay in deciding cases. I submit that I care not where you go to select the men to make up the tribunal, if they are trying to perform their duty it will take 22 or 25 of them longer to make up their minds than it will five or seven.

Senator KELLOGG. Let me ask you right there, Mr. Clark, if I do not interrupt you, what do you think of the plan for the commission having certain subsidiary officers or commissioners, if I may call them such—not commissioners having the same authority that you have, but representing the commission in different parts of the country—to whom people could appeal for relief, or to state their grievances, or lay before the local commissioners things that they wanted remedied?

Commissioner CLARK. I have thought some of that and am thinking some of it now, Senator, and I think that plan contains possibilities of great helpfulness and great good, if we can get the right men.

Senator KELLOGG. Yes. As a matter of fact, however, you can not have distinct regional control over rates that, of necessity, are interlocked all over the United States;

Commissioner CLARK. That is the way it has seemed to me.

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Senator KELLOGG. You must have some final power?

Commissioner CLARK. A regional body composed of a given number of states, upon which each State would have a representative, would recognize geographical boundary lines between States, but it would have no reference whatever to the point at which it cut a railroad in two, or where it cut the application of rates.

The CHAIRMAN. The question I was asking you, Mr. Clark, was more particularly on this: This country is so vast, the territory is so great, the distances are so great, that when you have to lay down a principle of law to govern those rates, the courts might be established without any reference whatever to geographical lines; but have them at convenient points so that those who would have to appear before them could reach them more expeditiously, without crossing the continent to come to Washington; and you suggested a moment ago that this appellate court might sit here to review the different decisions, and, on its own motion, to call attention to instances where the law had been improperly adjudicated by the regional court. Now, do you not think that under a division of that kind, not with regard to States, but for the convenience of the public, to establish them at convenient places, that it might be helpful?

Commissioner CLARK. As I say, Senator, I do not think that the objections that occur to one's mind, and to some of which I have referred, are at all insuperable. I think there is a very widespread feeling or desire to get more

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closely in contact with the representatives of the commission—more, I think in what we call “informal matters” than in the instance of a formal case. As has been pointed out in our annual reports, we have conducted for a number of years, as a facility, what we call a “special docket,” upon which, where a carrier recognizes the obligation, moral and probably legal if it were tested, to pay reparation to a shipper, to refund an unreasonable charge, it makes application to pay that to that shipper; shows that it has corrected its tariff, and is prepared to maintain that rate, and to apply it to all others; we accept that as a complaint and [350] answer admitting the complaint, and enter an order. We carefully scrutinize it, but we dispose in that way of thousands and thousands of cases, which, otherwise would necessitate formal procedure. Now, it is in such matters as those, and where a man wants some information, or a little guidance, that he desires this personal touch; and that could be obtained, I think, through the plan which you suggest, or through the plan which Senator Kellogg suggests. I do not think there are any insuperable difficulties about it. But I have felt that the idea of regional commissions, each exercising in its own region all of the powers of the commission, subject only to appeal to the central body, would necessitate a multiplication of organization and records that would be somewhat formidable. The law prohibits a carrier from engaging in transportation, except under a tariff lawfully filed with the commis-

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sion. It prohibits it from charging either more or less or different compensation than that so named in that tariff; and that official file of tariffs is an essential thing for a body that is going to decide rate cases. I have in mind one case in which a complainant alleged and testified that the rate between two certain points on a given commodity was so many cents per hundred pounds. The carrier admitted in its answer and its witness admitted on the stand that that was correct. As matter of fact, the tariff on file with the commission contained a different rate. We have to check all of these statements in the evidence as to what rates are, by the tariff, and if you had regional commissions, it would seem to me imperatively necessary that each of them should have this official file of tariffs, to which it could refer, and by which it could be guided, because the tariff is the law, regardless of what somebody may understand it to be.

The CHAIRMAN. It seems to me that you could place them in possession of those tariffs, and that that would be helpful, rather than a hindrance, for them to get in close intimate touch with the actual conditions of the locality, and not necessitate a complainant coming all the way to Washington.

Commissioner CLARK. He does not have to come to Washington often. I am not objecting to your plan, but I want to make it clear that under our plan, he can mail his complaint to Washington, and we serve it, and when the case is set for hearing it is set at or contiguous to the

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place from which the complaint originates. Our examiners go out and hear cases at points contiguous to the places of residence or business of the complainants; and the only occasion there is for them to come to Washington in connection with the case is in furtherance of their desire to orally argue the case before the commission at its final submission.

Senator KELLOGG. Mr. Clark, my suggestion for your consideration was simply that the commission have, either appointed by the commission or someone else, representatives in different parts of the country to whom the people could apply, and before whom they could appear, and who would become thoroughly familiar with local conditions, of which both they and you could take advantage.

Commissioner CLARK. Yes.

Senator KELLOGG. Is it not true that very few rate adjustments can be localized?

Commissioner CLARK. It is true.

[351] Senator KELLOGG. For instance, suppose the rates on flour from Minneapolis to the seaboard were up for consideration by the commission, would it not affect the rate on flour to every milling center east of the Rocky Mountains?

Commissioner CLARK. I think it would; and I think that if we had a case in which that rate were put in issue you would find immediately that the interests of Kansas City and Omaha and of Chicago and of——

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Senator KELLOGG (interposing). Louisville?

Commissioner CLARK. And 50 other places that I could name would intervene.

Senator KELLOGG. And they have done it already, have they not?

Commissioner CLARK. Yes, they have frequently done it; and those are some of the things that make the records voluminous; those are some of the things that necessitate substantial time in hearing the parties, and in bringing the case to final submission, where the commission can consider it; and then the commission must take some time, if it is going to make an intelligent decision, to analyze that record.

Senator KELLOGG. Take the rate on iron and steel products from the eastern manufacturing points to western manufacturing points: All those western manufacturing points are more or less competitive, are they not?

Commissioner CLARK. Decidedly so.

Senator KELLOGG. Reaching clear from New Orleans to St. Paul and Minneapolis?

Commissioner CLARK. Yes, sir.

Senator KELLOGG. And the rate structure of one necessarily affects the business of another community?

Commissioner CLARK. It certainly does.

Senator KELLOGG. Now, my idea was that the commission should have local representatives—I should have said my mere suggestion, rather—to whom the people could apply and from whom they could get local informa-

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tion as to conditions, and who could act, perhaps subject to your revision—the central power could still retain its jurisdiction all over the United States—I just wanted you to consider that.

The CHAIRMAN. Mr. Clark, have you anything else that you care to comment upon?

Senator KELLOGG. I have just one or two further questions: As I understand, Mr. Clark—unfortunately I had to be absent on Wednesday and did not hear all of your examination—but, as I understand, your recommendations are that the Interstate Commerce Commission should have exclusive jurisdiction of regulating the issue of railway securities of all railways engaged in interstate commerce?

Commissioner CLARK. I do not think I went so far as to say we should have exclusive jurisdiction. That is a question upon which there are many convictions as to just how far the jurisdiction, or rather, as to just how far the supervision should go, and just what form it should take.

We said in our paper—a majority of the commission—that proper Federal regulation of the issuance of securities by the corporations [352] engaged in interstate transportation, and supervision of the application of the proceeds therefrom, would go far toward preventing the abuses referred to in the preceding paragraph. Now, I have just put into the record extracts from our annual reports, and from some of our decisions, touching on that subject, which I had extracted in brief, as I thought they

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would be of convenience to the committee in looking over that question. Some of the advocates of supervision of securities think that the Government ought not only to authorize the issuance of securities, but that it ought to put its stamp of approval on the security itself. Now, others—and in this connection I refer you to the report of the commission that was appointed by the President of the United States a few years ago to study this question—think that would be undesirable. They thought, and a great many others think, that all that is necessary is publicity as to the circumstances and conditions, and the purposes to which the money is to be put, and an affirmative permission to issue the security, conditioned upon the application of the proceeds in the manner proposed.

Senator CUMMINS. You are speaking now of the so-called Hadley Commission?

Commissioner CLARK. Yes, sir.

Senator KELLOGG. The commission recommended, as far back as 1907, that Congress should provide for Federal supervision of the issuance of securities, did it not?

Commissioner CLARK. Yes, sir.

Senator KELLOGG. In a proceeding, with which I was connected, before your commission. Now, as I understand, the view of the commission is that so long as these railroads are organized under State charters, the commission's power is supervisory and simply permissive. The Federal Government does not pretend to grant to a

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corporation organized under the State law a charter power to issue any stock it has not already power to issue; but the power of the commission would simply be permissive; that they must come to the Federal commission and get permission to issue stock of a corporation engaged in interstate commerce; that is your idea, is it not?

Commissioner CLARK. Under the regulatory power.

Senator KELLOGG. Yes.

Senator CUMMINS. I think, Senator Kellogg, that Mr. Thom, who discussed that question at very great length before what is known as the Newlands committee, takes quite a different view of the power of the General Government with regard to the issuance of stock.

Senator KELLOGG. Well, I will not go into that now. That is a legal question, I think, very likely. Secondly, Mr. Clark, do you recommend that the Interstate Commerce Commission should have exclusive jurisdiction of fixing up the rates of all railroads engaged in interstate commerce?

Commissioner CLARK. No, sir.

Senator KELLOGG. You do not?

Commissioner CLARK. No, sir.

Senator KELLOGG. You propose to reserve, so far as the powers of the States are concerned, the local commission's present authority?

Commissioner CLARK. We have not suggested anything to the contrary.

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Senator KELLOGG. Well, I was not entirely clear on that.

[353] Senator WATSON. You have suggested, however, a "twilight zone" as between the two jurisdictions?

Commissioner CLARK. Yes.

Senator WATSON. And your only solution of that problem is that it shall be worked out by moral suasion?

Commissioner CLARK. Yes.

Senator WATSON. That is to say, by conference and trying to get together?

Commissioner CLARK. Except that we suggest that if we could be authorized to utilize the services of the State commissions in appropriate instances and to an appropriate extent, it would contribute largely to the desired end in that direction.

Senator WATSON. Do you think, if you are to operate the railroads as a unified whole in the United States, that that would be possible?

Commissioner CLARK. No.

Senator WATSON. I mean by that, is it possible to have 48 different commissions and your own commission trying to manage one affair, literally, because the commerce that originates in any State practically becomes interstate commerce, in most instances?

Senator CUMMINS. I would like to hear a little more on that.

Senator WATSON. That is what I want to hear. I am trying to get his opinion about this whole thing.

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Senator CUMMINS. I know. A good many people have mentioned the "twilight zone."

Senator WATSON. That is what I am trying to get at—what it is.

Senator CUMMINS. Is there any "twilight zone"? The law does not recognize any twilight zone?

Senator WATSON. Commissioner Clark, in his statement the other day, said that there was a "twilight zone." You used that expression, did you not?

Commissioner CLARK. Yes.

Senator WATSON. In what you read the other day. Now, what I am trying to find out is what that "twilight zone" is, and how far it extends, and how you propose to dissipate it, and I asked you that the other day, in a way: we do not get to ask questions connectedly here, you know; we all break in, and I did not get to follow it up; but, in answer to what I asked you, you said you thought that by having conferences and consultations you could overcome that difficulty, and possibly agree on rates. Now, in my judgment, that is the weakest of all the suggestions you have made. Senator Cummins suggests that there is no "twilight zone," and I have had some doubt on that question in my own mind; but if there be, can you overcome it by moral suasion?

Commissioner CLARK. In speaking of a "twilight zone," I believe we adopted a phrase that had already been coined; but I will try to explain my understanding of it. The act to regulate commerce provides that its

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terms shall not apply to the transportation of persons or property wholly within one State.

Senator WATSON. Yes.

Commissioner CLARK. And which is not shipped to or from a foreign country. Now, there was a great deal of controversy as to the power of the Interstate Commerce Commission to abate unjust discriminations or undue preferences or prejudices between State and [354] interstate rates, which was adjudicated by the Supreme Court in the Shreveport case, in which the law was interpreted as requiring us to order a discontinuance of an undue prejudice against interstate commerce, or an undue preference to State commerce; and in that Shreveport case we entered such an order, and it was litigated, and there were, of course, very strongly opposed views; but the Supreme Court sustained the view that the commission had that power and that duty. We have had a number of cases of that kind in various sections of the country. It is not a local question. The Shreveport case was precipitated by the action of the Legislature of the State of Louisiana, directing the Louisiana commission to present the question to us, and making an appropriation to pay the expenses of the proceeding. Now, not a great while after that decision in the Shreveport case, we had just the same kind of a complaint from Natchez, Miss., against Louisiana, and we have had numerous cases in which Missouri interests have complained of undue prejudices against them because of the conditions in Illinois, and

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from Illinois people complaining of the situation created by Missouri. Those are only cited as illustrative.

Now, we think that question of the right of the Interstate Commerce Commission—and when I say the “right,” I mean the duty—to order carriers to cease and desist from discriminations of that kind, has been settled.

Senator WATSON. And that you have a clearly defined right?

Commissioner CLARK. And that we have the power to do that thing.

Senator CUMMINS. If you use the term “twilight zone” as synonymous with a variety of opinion I can understand it.

Senator WATSON. Well, that creates a twilight zone.

Senator CUMMINS. Then we are living entirely in a twilight zone?

Senator WATSON. We are here.

Senator CUMMINS. The whole subject is a twilight zone if that is true.

Senator WATSON. I do not agree with you about that, Senator. I think there are some very well-defined propositions in connection with this railroad matter.

Senator CUMMINS. As soon as the matters reach the Supreme Court, and are decided there, I suppose they may be said to be in the sunlight. But I wanted to know if the term was used in the sense of differences of opinion as to our constitution and as to the authority conferred upon the Interstate Commerce Commission, because each

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man has an opinion of his own with regard to the relative rights of the States and the General Government.

Commissioner CLARK. I have tried to explain my view of it, and I think that is the view of the commission, that there is no further question as to the duty of the commission to deal with those cases. That is evidenced by the fact that we are continually dealing with them, and we are entering our orders in those instances in which we find that the prejudice is undue; but I do not know of any difference of opinion, at least among us, on the proposition that if transportation is wholly within one State, and the property is not transported to or from a foreign country, we have no jurisdiction whatever over the measure of that rate or the conditions that are imposed by that State.

[355] Senator WATSON. Suppose there is in a train running, say, from Chicago down to Mattoon, Ill., one car that has no safety appliances on it, while the other cars in that train have; do you not hold that one car to be an interstate car, and can you not compel the putting on of safety appliances?

Commissioner CLARK. Yes, Senator; and that has been very definitely decided by the Supreme Court.

Senator WATSON. Precisely.

Commissioner CLARK. But let me call your attention to the fact that the jurisdiction of the act is different from that of the safety appliance acts; I mean that the safety appliance acts are different from the act to regulate commerce in that respect.

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Senator WATSON. Do you mean by that that it is differently worded in the statute?

Commissioner CLARK. Very differently worded.

Senator POINDEXTER. But that does not affect the power of Congress at all?

Commissioner CLARK. No; but the safety appliance act says that no carrier engaged in interstate commerce shall permit the use on its line of any car not equipped with safety appliances; whereas, the act to regulate commerce says that it applies to common carriers engaged in the transportation of persons and property from one State or district to another; and then it provides that it shall not apply to the transportation of property wholly within one State. The act to regulate commerce does not apply in all its provisions to carriers that are engaged in interstate commerce, while the safety appliance act does.

Senator WATSON. And by proper definition, therefore, you think you could make all commerce practically interstate commerce, do you?

Commissioner CLARK. Oh, no; I do not suggest that at all. Under the safety appliance act the Supreme Court decided that a little railroad out in Colorado that has no physical connection with any other railroad, was engaged in interstate commerce, because it was carrying express matter that had been shipped and was moving in interstate commerce, and was, therefore, amenable to the safety appliance law. Now, no court would hold that that carrier was subject to the act to regulate commerce be-

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cause it happened to be carrying an express package that had been delivered to it by an automobile, and would be taken from it by another automobile. There was no physical connection between it and any other railroad.

Senator WATSON. In your judgment, would not the Congress have power to make such definitions of interstate commerce as would include the traffic hauled on that little railroad, if it was taken on its trains, and afterwards taken out of the state?

Commissioner CLARK. My view, for what it may be worth, of the power of Congress under the commerce clause of the Constitution is that it is so broad that I am unable to suggest an argument that the Congress could not do anything under it.

The CHAIRMAN. There is quite a considerable twilight zone there?

Commissioner CLARK. No, I do not think so. I think it is a case of midnight sun; it shines all the time.

[356] Senator KELLOGG. Mr. Clark, do you know whether the Railroad Administration is keeping the accounts of operating expenses according to the rules and divisions or subdivisions fixed by the Interstate Commerce Commission?

Commissioner CLARK. In saying "subdivisions" do you mean classifications?

Senator KELLOGG. Yes, classifications, I should have said.

Commissioner CLARK. I understand that it is.

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Senator KELLOGG. In other words, that transportation expenses are subdivided into supervision, station service, yard service, and train and locomotive service, casualties, miscellaneous transportation expenses, joint facilities account, and total transportation expenses?

Commissioner CLARK. I understand that the accounting officers, who are now employees of the Federal Administration, on the several railroads, are keeping their accounts in accordance with the classification prescribed by the commission.

Senator KELLOGG. Then, you could make up for this committee a comparison between, say, 10 months of 1918 with ten months of 1917—or the whole year, when you get the reports—subdividing them on the divisions I have referred to?

Commissioner CLARK. Yes; we could make up a comparative statement subdividing them in so far as they are required to be subdivided by our reports.

Senator KELLOGG. Yes.

Commissioner CLARK. Our reports, or, rather, the reports to us, do not contain all of the detail that could be worked out from the books, because it would make a report so refined that it would be of little value.

The CHAIRMAN. At that point, just let me read this letter from Secretary McAdoo, bearing upon what is being developed now.

Senator KELLOGG. Very well.

The CHAIRMAN. This is a letter addressed to me by Di-

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rector General McAdoo, under date of January 7, 1919, and it reads as follows:

“DEAR SENATOR SMITH: Permit me to call your attention to the attached letter from Mr. G. H. Parker, of the United States Railroad Administration, concerning railroad returns for the month of November, 1918, which became available since my statement before the Senate committee last week-end, which indicate, when considered in connection with the ten months ending October, that the operating income of the Class I railroads under Federal control for the calendar year 1918 will fall short by about \$196,000,000 of paying the standard return, whereas I stated to your committee, on the basis of the best estimates then available, that this shortage would be about \$136,000,000. Please permit me to correct my statement accordingly. You will observe that the difference between the actual November figures and the estimate for November was almost wholly due to reduction in operating revenue (or gross earnings) and to increased wages, including back pay.

“It is, of course, important that we give you the benefit from time to time, as rapidly as the facts develop, of the most accurate information obtainable. But the fact that these estimates are necessarily subject in this way to revision lends additional emphasis to the point which I made before your committee that it is impossible to predicate satisfactory conclusions upon the present necessarily incomplete results for even a single year of Federal con-

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trol, especially under war conditions. Railroad accounts are so complicated that it will probably be the first of March, 1919, before a satisfactory showing can be given of the actual results for the calendar year 1918, together with a reasonably accurate analysis as to be the reasons for the showing.

“Cordially yours,

“W. G. McADOO.”

“HON. ELLISON D. SMITH,

“*United States Senate.*”

[357] Now, accompanying that letter is a letter from Mr. G. H. Parker, which I suspect I had better also read, as it bears right on this point [reading]:

“WASHINGTON, January 7, 1919.

“WALKER D. HINES, Esq.,

“*Assistant Director General,*

“*United States Railroad Administration.*

“DEAR SIR: Last week by your direction I completed the best estimate that was then capable of being made of operating income for the Class I railroads under the control of the director general for the year 1918, basing this estimate upon the return then available for the 10 months ending with October, 1918. This estimate showed that the operating income would fall short by about \$136,000,000 of meeting the standard return for the year 1918.

“This week the returns for the month of November have become available to a large extent (although not yet completely) and they indicate that the operating income

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for the month of November will be less by about \$28,000,000 than the amount which we were able to estimate last week.

“This falling off is accounted for by a falling off in business resulting in a decrease in revenues to the extent of \$6,000,000 and by an increase in expenses due almost wholly to increased wages, (including back pay) of \$22,000,000.

“On the basis of the November figures and on the basis of the operations for the 10 months ending with October, it now seems reasonable to estimate that the operating income for the year 1918 will fall short of paying the standard return by about \$196,000,000.

“Yours, very truly,

“G. H. PARKER, *Assistant.*”

Commissioner CLARK. Senator Kellogg, I do not know whether you were here when I put into the record a statement showing all of the detail that is shown on this summary——

Senator KELLOGG (interposing). Yes, I was here; I saw that.

Commissioner CLARK. And comparing the 10 months of 1918 with the corresponding calendar months of 1917, and with the average of the same calendar months for the test period, that is, the result, the operating income.

Senator KELLOGG. I saw that, and I was here when that was put in, and I asked a few questions about it, but item No. 40 in the summary you put in is “Transportation,”

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and transportation is divided into various subheads under your reports, is it not?

Commissioner CLARK. Yes, sir.

Senator KELLOGG. And those subheads are "Supervision," "Station service," "Yard service," and so on?

Commissioner CLARK. Those subdivisions are shown in our annual report blank; that is, what these several accounts contain.

Senator KELLOGG. You could give us a comparative statement, then, dividing transportation into these various subheads, or should we ask that from the railroad administration?

Commissioner CLARK. No; we could make up a statement of that kind, Senator. I imagine it would take some little time to do it, because I do not think we could make it up except by going through the annual reports and taking it off from each one of them, and recapitulating it in a statement.

Senator KELLOGG. I will ask the chairman to confer with the railroad administration, and I will make up a list of the things I would like to have; or, if it is satisfactory to the committee, we may suggest that you make it up.

Commissioner CLARK. Very well.

The CHAIRMAN. Are there any further questions?

Senator TOWNSEND. Yes; I have a good many questions.

[358] Senator KELLOGG. I am through.

Senator POINDEXTER. Speaking about harmonizing with

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the various State commissions, Mr. Clark, as matter of fact the Federal Government, whether it has already acted by Congress or not, has complete jurisdiction over every railroad that is engaged in interstate commerce, has it not?

Commissioner CLARK. I think so.

Senator POINDEXTER. And, consequently, has power to regulate any road and the trains running on it, even though those trains are carrying commerce solely within the State; and, that being so, is it not extremely desirable to have uniformity of regulation of roads and of all transportation agencies throughout the country?

Commissioner CLARK. Yes; I think that uniformity is most desirable.

Senator POINDEXTER. We have not got it now.

Commissioner CLARK. No.

Senator POINDEXTER. And how would you bring it about? I did not hear your statement as to how you would bring about this uniformity of regulation.

Commissioner CLARK. Our suggestion was that this conflict, or these differences, which were all included in that term "twilight zone," could be very largely removed; that they could be minimized, at least, if not entirely overcome, by a proper measure of coöperation between the Federal commission and the State commissions; and that the spirit that should underlie such an effort would grow with the effort itself, and that it would be a great contribution in that direction if the Federal

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commission were authorized to utilize the services of the State commissions in appropriate ways and to appropriate extent. We had in mind there that there come up questions—perhaps, questions of fact, or even cases—that could be referred to these State commissions for information or for advice, and that we should extend the idea of having the State commissions and our representatives sit together in making a common record in a case that involved some question that might be independently before us and before the State commission at the same time, or which might involve the question of whether or not the action of the State had created or perpetuated undue prejudice against interstate shippers.

SENATOR POINDEXTER. What is your solution of the situation, where there is a difference of opinion between the local commission and the Interstate Commerce Commission?

COMMISSIONER CLARK. Well, under our suggestion, Senator, if it were a question of undue prejudice against interstate commerce, our commission would have to decide it, and if it were a question that was outside of our jurisdiction, it would be left to the State, as it is at the present time.

SENATOR POINDEXTER. Is it not entirely feasible to devise a law by which the local commissions could be utilized, and, at the same time, the Interstate Commerce Commission be given control over them, in so far as and to the full extent of its power to regulate interstate commerce?

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Commissioner CLARK. I think so.

Senator POMERENE. You mean to act as a sort of a court of appeals from the State commission?

[359] Senator POINDEXTER. That would be a detail, whether as a court of appeals or by direct initiative of the Interstate Commerce Commission. I have not undertaken to define how it should be done, but I was asking for the opinion of Mr. Clark as to whether or not we could preserve the local commissions and at the same time secure harmony and uniformity of regulation under the supreme authority of the Interstate Commerce Commission.

Commissioner CLARK. I think, Senator, that an illustration of that is the fact existing to-day that we have both State and Federal inspection of grain, and, in some places, the same individual is the Federal and State inspector; and there is, apparently, no conflict and no difficulty about that.

Senator POINDEXTER. Now, there are two very distinct classes of duty performed by the Interstate Commerce Commission: One is of a quasi-judicial character, in the determination of reasonable rates and the making of general rules and regulations; and the other is the execution of those orders—the application of them to traffic, and seeing to what might be called the daily supervision or operation of the railroads—quite distinct duties. What is your judgment, Mr. Clark, as to the division of those two classes of governmental supervision, and plac-

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ing the purely administrative and executive supervision under an administrator, we will say, for lack of a better term—a railroad administrator—and leaving the Interstate Commerce Commission to devote all of its time to hearings, and to the formulation of general rules, and to the determination of reasonable rates, and such like duties?

Commissioner CLARK. We have suggested in our memorandum here, Senator, conferring upon the commission rather broad powers of regulation of physical operation, which we have never had. But putting aside the mere question of regulation of trains and physical operation, the great difficulty with separating the functions as you suggest is that very frequently the undue prejudice or the unjust discrimination rests in a practice and not in the rate itself; it results from the manner in which it is applied; and we have never considered it from the standpoint of separation of those duties. What are ordinarily termed the “police powers”—and I appreciate that the making of rates has been held to be a police power; but I do not include that in the expression at the moment—of the State commissions is something that we have never felt any occasion to interfere with. We feel that a State commission is just as well qualified to say whether or not a certain repair should be made to a station as we are. There have been some questions of alleged interference with interstate commerce by State commissions in their requirements as to the running of trains. Some of those

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questions have gone to the courts; but none has come to us, because we have never had any power to say that a railroad should either take off or put on a train.

Senator POINDEXTER. Then, I understand that your recommendation is that supervision of service and of operation should be continued under the Interstate Commerce Commission rather than delegated to a purely executive official?

Commissioner CLARK. I think it is better to rest it with the body that has supervision of the rates and their applications and practices in connection with the transportation of freight.

[360] Senator POINDEXTER. How will the Interstate Commerce Commission, which is sitting hearing cases and studying very often abstruse and more or less abstract questions as to general rules of transportation, perform the work of supervision of the operation of trains and of traffic?

Commissioner CLARK. In the same way that we perform the duties of administering the safety-appliance act, the locomotive-and-boiler inspection act, and the hours-of-service act.

Senator POINDEXTER. How do you do that?

Commissioner CLARK. Organize bureaus of competent men to do it, and lay down rules of procedure.

Senator POINDEXTER. And they report directly to the Interstate Commerce Commission?

Commissioner CLARK. They handle all of the details of

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those things. They have no power to enter orders, but they supervise all of the inspection and investigation, and take care of the suits.

Senator POINDEXTER. How are the orders entered? They have no power to enter orders. They see that there is some defect in operation or some inefficiency in service; some failure of the road to comply with the rules of the Interstate Commerce Commission, but they have no power to correct that, and it takes a considerable while, does it not, before they can get an order?

Commissioner CLARK. Well, you do not have to enter an order in a case of that kind, Senator, because the law provides a penalty for that. These inspectors are continually in touch with the local officers, and they call to their attention things that are not sufficiently important to report as infractions of the law. However, where they discover infractions of the law they report them to the chief of the bureau and he takes it up with the attorney for the bureau, and they determine whether or not it is a proper case to present to the United States attorney for a suit for penalty.

Senator POINDEXTER. The only remedy is a case in court—litigation?

Commissioner CLARK. That is all.

Senator POINDEXTER. Would it not be a great deal better to have an official with authority to make a decision and to put it into effect, subject to revision by some tri-

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bunal—perhaps by the Interstate Commerce Commission?

Commissioner CLARK. That feature has been incorporated in the locomotive-inspection law, because there the inspectors are by law authorized to order the locomotive out of service if she is in a condition that they think justifies that act; and they do it sometimes, and we have had very, very little complaint of their acts.

Senator POINDEXTER. That is all.

Senator TOWNSEND. Mr. Clark, is there very much conflict between your commission and the State commissions?

Senator CLARK. No, sir.

Senator TOWNSEND. Do the State commissions manifest a disposition to work in harmony with the orders of the Interstate Commerce Commission?

Commissioner CLARK. I think that, speaking generally, there is a very substantial disposition on the part of the State commissions to follow the decisions of the Interstate Commerce Commission. I do not mean to say that they do that blindly, but they give a great [361] deal of weight to the decisions which our commission may have made in the same situation or on the same subject. There are some exceptions to that statement.

Senator TOWNSEND. One of the reasons that the railroads have given for unified control or for some different control is that they are subject to 48 forms of regulation. Is there much conflict, in reference to the fixing of

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rates, between the Federal commission and the State commissions?

Commissioner CLARK. There are a good many cases in which complaint is brought against the carriers of undue preference to State traffic, or undue prejudice against interstate traffic, on account of the different adjustments in the State and interstate.

Senator POMERENE. That is, of rates?

Commissioner CLARK. Yes, of rates.

Senator TOWNSEND. What suggestion have you to cure that condition, if any?

Commissioner CLARK. I have no suggestion, further than that which I have just undertaken to explain as the view of the commission, that a great deal can be accomplished in that way through a measure of coöperation with them, which is not now provided for, or for which there is no authority. I do not know that it would be possible to remove it all in that way, but we think a very substantial portion of it could be.

Senator POINDEXTER. Would it not be desirable to make it very clear in the law that the Interstate Commerce Commission shall have power to review the regulations of all the State commissions, and have authority to require them to be harmonized in accordance with their orders, in such way as they might direct, and to such extent as the Interstate Commerce Commission might decide to be desirable?

Commissioner CLARK. That would conduce to a rapid

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approach to harmony in those things. As I have stated, we have these complaints from neighboring States. They see-saw back and forth and they come to us. Now, if the States had uniform rates, and they were not unduly prejudicial against interstate commerce, there would not be any of that conflict; but it grows out of the fact that the States have exercised their power to fix rates on intrastate shipments which are lower than those applied to interstate shipments, and the interstate shippers complain of the discrimination.

Senator TOWNSEND. The director general gave a good many reasons here the other day in favor of continuing the railroad operation in the hands of the Government for the next five years, or for five years after the termination of the war by a treaty of peace. Among other things, he seemed to think it was absolutely essential, in order that the Congress might act intelligently, that the physical valuation of railroads which is now in process should be completed. What has been your feeling about that? What is your opinion about that?

Commissioner CLARK. I think it is very desirable that that work should be completed as rapidly as possible, but I am not very sanguine as to an early completion of it, because I do not believe that any of the important principles are going to be accepted, except after litigation.

Senator POMERENE. Will you allow me to ask just a preliminary question there?

Senator TOWNSEND. Certainly.

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[362] Senator POMERENE. Would you care, Mr. Clark, to express an opinion as to when that will be completed?

Commissioner CLARK. Senator, I could not express any intelligent opinion about that.

Senator TOWNSEND. When it shall have been completed—that is, when the first heat shall have been run in that race—then it has got to be brought up to date again, has it not? It has got to be kept up to date and constantly revised, in order to make it of any particular value?

Commissioner CLARK. The act provides that after it has once been determined, it shall be kept up to date, and that all changes shall be taken into account; and, manifestly, that is necessary, if it is to be of any lasting or permanent value. It would not be of any advantage to any of us now to know that in 1905 a certain railway was worth so much money, because it may have been the same railroad or it may have been a very different railroad; the conditions might have been very different, so that, for present use, the question is: What is it worth to-day?

The CHAIRMAN. What is your opinion of the real practical value of this physical valuation in determining the questions that come before us, or that come before your body?

Commissioner CLARK. Well, the principal value, as it seemed to us when we recommended the work, was that the carrier has a constitutional right against confiscation of its property by regulation, and in some important cases the carriers have put in a large volume of evidence

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as to the value of their properties, and there was nobody to contradict them. The courts had no guide nor any authentic valuation except that of the carriers themselves, and except in instances where the States had made valuations of properties within the State boundaries. And we thought that a valuation of the properties was the only way in which to determine, with reasonable accuracy or reasonable approximation, the value of the property devoted to the public use, which the courts had held was the measure or the standard basis upon which to determine the carrier's right to earn.

Senator POINDEXTER. How about taking the market value of the stock and the market value of the bonds of the roads?

Commissioner CLARK. I should think you would have a foundation of sand.

Senator POINDEXTER. You do not attach much importance, then, to the market value?

Commissioner CLARK. No.

Senator GORE. The law requires ascertainment of the reproduction value—the cost of reproduction?

Commissioner CLARK. Yes.

Senator GORE. The cost of reproduction to-day, if it should be obtained, on the basis of the prevailing high prices, as compared with the cost of reproduction five years ago, would be 50 per cent. higher now than it was then?

Commissioner CLARK. It would be very much higher

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and, I presume, that much.

Senator GORE. And if two years from now there comes a general decline in prices, as we all anticipate there will—the cost of reproduction two years from now would be much less than to-day?

[363] Commissioner CLARK. Yes, that is so. Of course, the reproduction value fluctuates with the material markets.

Senator GORE. So that is a shifting standard all the while.

Commissioner CLARK. Yes.

Senator GORE. And the physical valuation of properties is only one of many factors in the ascertainment or determination of rates?

Commissioner CLARK. I think so.

Senator TOWNSEND. Mr. Clark, my colleagues are so much quicker than I that they anticipate the examination that I was contemplating.

Senator GORE. I beg your pardon, Senator.

Senator TOWNSEND. Oh, that is all right. You do it better than I could. But I wanted to get your idea, Mr. Clark, of the value or importance that should be attached to physical valuation. Were you familiar with the somewhat celebrated case that occurred in Michigan, when in 1902, I think it was, 26 railroad companies contested our ad valorem tax law up there as to its constitutionality, and the State, with which I was connected at that time, in

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the defense of the suit, undertook to find out what the value of the railroads was, because the railroads contended that the rates fixed by the railroad commission were higher than the rates placed upon ordinary property, and that rate was used as the basis for fixing the railroad rates—the rate of taxation. You may recall that at that time we had a physical valuation of every spike and tie and every particle of property that was owned by the railroads; we also attempted two other methods of finding the value of the railroad property; one by capitalization of their earnings for an average period of time, and the other through the stock and bond proposition, as suggested by Senator Poindexter. And the remarkable thing about that was that with all the millions of dollars worth of property involved, the three methods, if I recall the figures correctly, came out within about \$6,000,000 of each other. So my object in asking you the question was to develop whether or not in this emergency the commission, if it were left to it, could determine approximately what the value of the railroad properties in the country was, without this physical valuation being completed?

Commissioner CLARK. Yes, I think we could determine approximately what they are worth, but I do not think that determination would stand in the courts, unless it were made in a way that it could be defended.

Senator TOWNSEND. Could you not defend the stock

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and bond proposition suggested by Senator Poindexter? The courts have accepted that in other cases.

Commissioner CLARK. I have never been able to convince myself that the market quotations of stocks or bonds of a railroad are an accurate guide as to the value of the property or even of the securities themselves.

Senator TOWNSEND. At any rate, taken for a term of years, under normal conditions, it gives you a fairly good idea of what men familiar with those properties think their value is?

Commissioner CLARK. Yes, it does; but it requires very careful analysis to determine what that capitalization represents—what is behind it. Take two railroads, operating side by side, and one may be capitalized at \$130,000 a mile, and the other at \$60,000 a mile.

[364] Senator POINDEXTER. You cannot arrive at absolute accuracy by any method, can you?

Commissioner CLARK. I do not think you can.

Senator POINDEXTER. You are bound to have a certain factor of error?

Commissioner CLARK. You can arrive at almost absolute accuracy in an inquiry into the physical value of the railroad property, but then you are up against the difficulty of the value of its intangible assets.

Senator POINDEXTER. And by the time you make a determination as to the value of the intangible assets, the physical value of it has changed?

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Commissioner CLARK. Yes.

Senator TOWNSEND. The intangible assets are not susceptible of exact inventory?

Commissioner CLARK. No; that has to be a matter of judgment.

Senator TOWNSEND. You have got to use the best methods of judgment known to determine the intangible value?

Commissioner CLARK. Yes.

Senator TOWNSEND. You did not think that the fact that we did not have this physical valuation now was an insuperable obstacle in determining what the value of the railroads is for the purpose of enacting new legislation? I do not think I misunderstood you.

Commissioner CLARK. No; I do not think it is an insuperable obstacle. I do not think that knowledge is at all essential to the determination of the questions which press for determination now, except possibly you may want to consider the question of Government ownership—purchase of the property.

Senator POINDEXTER. How much is that physical valuation work going to cost, Mr. Clark?

Commissioner CLARK. The main work, Senator, of our Bureau of Valuation will be completed within the next two years. After that the work of all our field forces, engineers, and accountants, etc., will be simply that of keeping up with the changes that have been made and that are

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made from time to time, so that those forces will, in the main, be dispersed. The work is costing approximately \$3,000,000 a year.

Senator TOWNSEND. How many years have you been at it?

Commissioner CLARK. Well, it has not cost that much each year since we have been at it. I do not remember the date we began.

Senator POMERENE. What proportion of the work is completed now?

Commissioner CLARK. I should rather furnish that a little later, Senator. We have those figures—the best estimates that can be made—from the Director of Valuation, but I have not them in mind. I am rather sure that he insists that the field work, as we call it—that is, the inventory and the engineering—will be completed in 1921.

Senator TOWNSEND. This cost of \$3,000,000 a year is a Government expense, is it?

Commissioner CLARK. Yes.

Senator TOWNSEND. What other cost is there? Is the railroad put to any expense in this matter?

Commissioner CLARK. Oh, yes; a very substantial expense. I presume their expense, in the aggregate, is as great as that of the Government.

[365] Senator POINDEXTER. But the railroad's expense is all ultimately paid for by the people in rates, is it not?

Commissioner CLARK. Yes.

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Senator GORE. The railroads have some people of their own who go along with your people, have they not?

Commissioner CLARK. Yes, sir; especially in the engineering measurements, for determining the reproduction cost; the quantities that have been placed in fills, and the quantities that have been removed from cuts, and the quantities of ties and rails, etc. Every effort is made to straighten out any little differences that may arise on the ground, and they try to settle there anything that might grow into a controversy later.

Senator TOWNSEND. I want to ask three or four questions in connection with Mr. McAdoo's testimony. Among other things that Mr. McAdoo urged as reasons for Government control was that he could standardize equipment. I want to ask you if equipment could be standardized—engines, cars, etc.—consistently with the highest economy and efficiency?

Commissioner CLARK. I think that some degree of standardization—and a greater degree than now exists—is not only attainable, but very desirable; but complete standardization is not at all practicable, in my judgment.

Senator TOWNSEND. Why?

Commissioner CLARK. The locomotive that is adapted for service on a level road is not suited for service on a road that has adverse grades. The car that is suitable for moving coal, for example, from the mines to the lakes or to the ports, or to industries that have equipped them-

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selves with trestles for the use of those cars, would not be at all adapted to the distribution of coal out in the prairie country, to small stations, where it has to be shoveled out of the cars; and so we might go on through with other examples. The box car is available for use and is used for more different commodities than any other type of car, and might, I think, with good results be substantially standardized.

Senator GORE. The question of bridges has a good deal to do with the type of locomotive that can be used, has it not?

Commissioner CLARK. Yes; the bridges on a railroad are built with a view to the use of the motive power that is adapted to that railroad. There are locomotives that are built for use on heavy grades, that have strong tractive power, adapted for slow movement on those grades, that would not be at all usable where no grades existed and the movement was more rapid.

Senator TOWNSEND. Mr. McAdoo also emphasized to quite an extent the fact that the per diem charges for the use of cars should be abolished. To what extent, in your opinion, could that be done, and do you think it ought to be done?

Commissioner CLARK. It seems to me, Senator, that under private ownership the owner of the car is entitled to compensation for its use, if it is used by others; and I see no way of compensating it except on a mileage or

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per diem basis. It was suggested—and the suggestion is not entirely without merit—that periods of car shortage could be tided over; that the necessities of the whole country could be better met if all the cars were owned by one corporation, and all of the railroads paid for the use of them, on the basis of use, [366] making a more mobile pool of equipment, that could be used in different sections of the country more satisfactorily and more effectively, under a good organization of that kind, than can be provided under separate ownership.

Senator TOWNSEND. Would it be practicable to compel every railroad company to own sufficient cars to meet every possible emergency which might come to that road?

Commissioner CLARK. No, because I do not think you can determine what that possible emergency may be.

Senator GORE. And it would not be economical, even if you could?

Commissioner CLARK. No, it would not be economical, because it would involve the construction and maintenance of sufficient cars to meet the maximum demand at any moment. The maximum demand does not ordinarily last more than a few weeks, and the equipment would have to lie idle for the remainder of the year, accruing depreciation and eating up interest.

Senator TOWNSEND. Mr. McAdoo also dwelt to a great extent upon the fact that the present administration of railroads has been able to secure larger loads or heavier

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loads; and, if I understand him correctly, he suggested that that would be one of the benefits of Government control, such as he advocated; namely, increasing the load of the car. You heard his testimony on that, did you, Mr. Clark?

Commissioner CLARK. Yes.

Senator TOWNSEND. What have you to say about that?

Commissioner CLARK. The larger load you can carry in an individual car and the larger tonnage you can haul in a given transportation unit, the more economical will be your transportation. The increased loading over former times was very evident in 1917, and has persisted through 1918.

Senator WATSON. That was brought about by the railway war board, was it not?

Commissioner CLARK. I was going to say that my judgment is, knowing what I do about it, that it is largely due to a cordial coöperation on the part of the shippers, who have recognized the difficulties, and who have been willing to load the maximum; and that it has also been contributed to, somewhat, by the car shortage. The shippers knew they could not get all the cars they wanted, and, therefore, they would get all the freight they could into what they could get. It has been contributed to by regulations prescribed by the War Industries Board and by the Food Administration. The Food Administration issued an order that flour should not be sold under a Food

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Administration license in lots of less than 60,000 pounds. Therefore, if I wanted to purchase from you a car of flour, I had to purchase 60,000 pounds, which could be put into one car, and that would be the natural result of it, although the tariff of the railroad under which the shipment moved did not require a loading in excess of 40,000 pounds.

Senator POMERENE. Did not the railroads themselves insist that the cars should be more heavily loaded?

Commissioner CLARK. Oh, yes; they did everything to encourage that, and there has been a progressive tendency in the direction of heavier loading. Cars are built nowadays with a very much larger capacity than they used to have, and the railroads are desirous of [367] utilizing that increased carrying capacity as far as they can, but their minimum weights, as prescribed in their tariffs, are controlled or influenced to a great extent by what are called "commercial minimums." The trade has adjusted itself to a certain commercial minimum, and they want to buy in car lots of a given number of thousand pounds, and the result is that a carload of 30,000 pounds, recognized as the "commercial minimum," moves in a car that could just as well carry fifty, sixty or even eighty thousand pounds of the same commodity. And the commercial minimums have been fixed by some of the States through their commissions, out of recognition of the desires of the smaller dealers to avail them-

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selves of the advantages of the carload rates and carload movements, and their inability to handle a carload that is as large in volume and in investment as two carloads under the minimum to which they have been accustomed; so that the question of car loading is affected very substantially by commercial conditions, and the extent to which those commercial conditions are recognized.

Senator POINDEXTER. I understood Senator Townsend's question to bear on the relation of Government operation to this maximum loading. Suppose that it is desirable to have as large a load as possible in each car, and as many cars in a train as can possibly be handled; is it necessary, or would it, in your opinion, be conducive toward that end to have Government ownership and Government operation?

Commissioner CLARK. No, I do not think that is at all essential, because if the Government's policy is to make that the prime or controlling consideration, all that is necessary is to let the railroads put up the minimum.

Senator POINDEXTER. The railroads would be inclined to do that, would they, as a matter of self-interest?

Commissioner CLARK. Yes, they have shown a progressive disposition to increase the minimum weights.

Senator POINDEXTER. Suppose the railroads were not under a system of enlarged supervision or control, they could be required to do that, could they not?

Commissioner CLARK. If the commission had the power

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to fix the minimum rate as well as the maximum. The minimum weight is a part of the rate. We are now authorized to say to the carrier, "You shall charge a rate not in excess of so much, and you may fix a minimum weight not in excess of so much," but we can not say that it shall not go as far below that as it chooses to go.

Senator TOWNSEND. Do the railroads at the present time abuse the minimum weight provision? Do they fix it too low for the economy of the shippers and the public generally?

Commissioner CLARK. The shippers do not think so.

Senator TOWNSEND. And what if you did fix the minimum unduly high; would that be for the good of the public or otherwise?

Commissioner CLARK. I would say it would not be for the good of the people to fix it unduly high. It is a question of reason. I should think it could be made unduly high, just as it could be made unduly low.

Senator TOWNSEND. There has been a good deal of talk here—and I am not clear about it myself; I do not know but that the figures we have asked for will show it—that the Railroad Administrator [368] raised the freight rates of the country and then issued an order increasing the wages of employees, and made them date back to January 1; and in all the reports that the administrator has made here, he has introduced that fact as an element which has been reflected in the reports since June last.

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Do you know, or is your commission familiar with the facts, as to how much of that back wage was paid in June, or when this order first took effect? Was a large portion of the back wages paid then, or was it distributed through the six or seven months since?

Commissioner CLARK. I understand that the largest amount of it that was paid in any single month was paid in June, and that is reflected by the figures which have been introduced here, which will show that the operating ratio during the month of June was something over 110 per cent.; but I understand that the back wages were paid as they were able to figure them out and get the payments made, the largest single month, as I say, being June, but that it continued on through perhaps September. I have not any accurate information as to the amount paid in any month, or as to just when the payment was completed, if it has been completed. It may be that there are some questions still pending, but they will be of minor importance.

Senator TOWNSEND. I received a letter yesterday from a railroad man stating that he understood his wages had been increased back to January, but that he had not received that increase as yet; so I imagine that possibly some of it is still pending. I had thought that probably it would be paid as promptly as possible, and that the subsequent months might be freed from that load, and that we could make something of a comparison between

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the later months of Government control and the corresponding months in 1917. Now, I do not know whether you were asked this question or not, but I want to ask it: Do you know whether that increase in wages was scientific, and applied with proper justice to all the employees of the railroad?

Commissioner CLARK. No, I do not; I have heard criticisms of it in individual instances. I think that there have been controversies as to its application in individual instances since that time, but I have no knowledge in the situation that would justify my offering any criticism of the general work of the board. I understand that their purpose was to recognize, in a larger degree at least, the lower paid employees, and to afford them what they deemed to be appropriate wages in the light of the living conditions of to-day.

Senator GORE. And those engaged in the operating work were advanced, but not the station agents?

Senator TOWNSEND. I did not understand your question, Senator.

Senator GORE. I say, as I understand the increase in wages has been to those engaged in the operating departments, generally.

Commissioner CLARK. I understand increases have been made to all employees.

Senator GORE. I was talking to a man yesterday, and he said that the station agent at Rockville, Md., had not been

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increased, and that he did not get as much pay now as the man who flags the trains as they pass.

Commissioner CLARK. I do not know about that particular case, Senator. I do know that the director general issued an order quite [369] recently affecting the pay of the employees that you have referred to—the station agents and the telegraph agents, etc.

Senator GORE. I have had two or three complaints from those men who work inside.

Senator TOWNSEND. Do you think, Mr. Clark, as a general proposition, that the increased wages are too high, or ought not to have been made?

Commissioner CLARK. No, sir; I do not think so.

Senator TOWNSEND. Now, the railroad administrator emphasized that—and I thought it was for the purpose of showing or making an appeal to the laboring men of the country that under Government control they would get higher wages. Now, under existing law, when you pass upon the justness and reasonableness of a rate, do you take into consideration what the railroads pay in wages?

Commissioner CLARK. We take into consideration the net results of operation; and the operating expenses, we know, contain as their principal item, the wages paid to employees; and the principal reasons assigned by the railroads in justification of the proposed 15 per cent. increase were the increased operating expenses due to in-

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creased wages which they had been obliged to grant, and the increased cost of fuel and other supplies, and that was the basis of our awarding it.

The CHAIRMAN. The usual hour of adjournment has arrived, but there being no session of the Senate to-day, we will continue until half past twelve, if that is agreeable to you gentlemen?

Senator CUMMINS. Yes.

Senator TOWNSEND. If an increase were to be granted by the railroads to the employees generally, the commission would take that into consideration in fixing a rate?

Commissioner CLARK. Necessarily it must.

Senator TOWNSEND. I gathered the impression from what was said the other day that possibly it would not be done. You do not need any new law for that now, do you?

Commissioner CLARK. No, sir.

Senator CUMMINS. In order to understand one of the tables that Mr. Clark has introduced, I want to ask him a question about it. The loss and damage claims that are paid in connection with the movement of freight and persons are entered in the railroads' accounts as a cost of transportation, are they not?

Commissioner CLARK. Operating expenses.

Senator CUMMINS. Operating expenses?

Commissioner CLARK. Yes.

Senator CUMMINS. Did the railroads, prior to the Gov-

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ernment's taking possession, report the claims that were pending and unpaid?

Commissioner CLARK. No, sir.

Senator CUMMINS. So that in the account or in the table that you have introduced showing the comparative cost of operation during the first 10 months of 1917, as compared with the first 10 months of 1919, the claims that were paid for loss and damage appear?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. How did you get the claims that were paid by the Railroad Administration on this account?

Commissioner CLARK. From the reports of the operating expenses of the individual carriers.

[370] Senator CUMMINS. As reported by the individual carriers?

Commissioner CLARK. Yes.

Senator CUMMINS. Have you any information, or can you secure any information and give it to the committee, with regard to the amount of claims paid during the first 10 months of 1917 and the amount paid during the first 10 months of 1918?

Commissioner CLARK. We will be very glad, Senator, to get those figures, in so far as they are available. I hesitate to promise them, because I do not think they are reflected in the monthly reports—that is, segregated.

Senator CUMMINS. Well, if they are not—

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Commissioner CLARK (interposing). And if they are not, we would be able to get them only by special reports or from the annual reports.

Senator CUMMINS. Is there any way that you can get and give to the committee the aggregate amount of claims for loss or damage to property or persons pending and unpaid on the 1st of November, 1918?

Commissioner CLARK. We could get it by requiring a special report from the individual carriers.

Senator CUMMINS. Would that be a difficult thing to do?

Commissioner CLARK. Oh, no.

Senator CUMMINS. So that we could compare the amount pending and unpaid at the end of October, 1918, with the amount, if you will get it, pending and unpaid on the 1st of November, 1917. The reason I ask that is this: It has been reported to me many times that the Railroad Administration is pursuing a policy of refusing to recognize or pay the claims which have arisen in the operation of the property, or, if not refusing, at least making it very difficult to reach any conclusion with regard to them; and I would like some information upon that point, if you can get it.

Commissioner CLARK. We will undertake that, Senator. I know of no way to get it, except by special report from the carriers, because we never get any report as to the number or volume of claims pending and unpaid.

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Senator POMERENE. I have understood that an order had been issued to the effect that no claim shall be paid unless it is made within four months from the time of shipment. I should like to know what authority of law there is for that order.

Senator GORE. War power.

Senator CUMMINS. Do you ask that of Mr. Clark?

Senator POMERENE. Yes.

Commissioner CLARK. I think that the bill of lading contains such a provision. I will not be certain about that, but I think it does.

Senator CUMMINS. Just one question with regard to the valuation proceeding. This valuation was begun about 1912, was it not?

Commissioner CLARK. I think so.

Senator CUMMINS. Now, you were required or asked to find several items of value. One of them was the cost of reproduction new; another was the cost of reproduction with depreciation; and another was the original cost or the investment. You have not been very successful in ascertaining the original cost, as I understand.

Commissioner CLARK. Because the records are not available from which it could be determined.

[371] Senator CUMMINS. Yes. The cost of reproduction, if that be the standard of value, changes with every year, does it not?

Commissioner CLARK. Yes, sir.

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Senator CUMMINS. And if that standard were applied at this moment it would be 25 or 30 or 40 per cent. more than it was at the time the engineers gave their estimate that is now on file?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. Then how would that furnish any real basis for the adjustment of rates—a cost of reproduction 10 years ago?

Commissioner CLARK. I do not think that it would.

Senator CUMMINS. If the railroads are entitled to a return upon the value of their property——

Commissioner CLARK (interposing). I do not think it would furnish a basis.

Senator CUMMINS. If you were to adopt, however, the standard—and, of course, the courts must ultimately pass upon it—of the investment in the property, and consider that as the thing protected by the Constitution against confiscation, it would be a fixed and permanent standard, and one that could be used so long as the question was alive, could it not?

Commissioner CLARK. Yes, sir.

Senator CUMMINS. I do not wish to anticipate the opinion of the commission on these disputed points, but why can not the original cost be ascertained by estimate, if the books are not available, just as easily as you can take the opinion with regard to the cost of reproduction?

Commissioner CLARK. Well, they do not take the

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opinion as to the cost of reproduction, Senator. The cost of reproduction is ascertained by engineering inquiries on the ground, and they measure the quantities of dirt or rock that have been removed, and they apply the unit prices that are governed by a very careful study over a period of years immediately preceding the date of valuation; so that the reproduction cost as of that date is substantially as accurate an estimate of reproduction cost as is the estimate of what is there and what it is worth to-day in its present condition.

Senator CUMMINS. That is, what it would cost to reproduce it to-day, but if you have the time at which the property was constructed, and if you have the prices which prevailed at that time, which I would think would be accessible, what is the difficulty of ascertaining the cost of the property at the time it was constructed?

Commissioner CLARK. I do not think there is any special difficulty about it. I think it would be infinitely simpler than some of the things this valuation act does require of us.

Senator CUMMINS. That is what I think.

Commissioner CLARK. We are in court here now in the District on a mandamus proceeding. The Kansas City Southern Railway is attempting to mandamus us to do something which the Supreme Court, in the Minnesota rate cases, said it was impossible of accomplishment, and, if undertaken, it had no basis but pure speculation; and

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yet Mr. Untermeyer is down here asking the courts of the District of Columbia to issue a writ of mandamus ordering us to do it.

Senator POINDEXTER. You will be in a bad fix if they recover.

Commissioner CLARK. Yes.

[372] Senator CUMMINS. There is provision in the Constitution against cruel and inhuman legal punishment.

Senator GORE. That would be justifiable contempt, in that case.

Senator TOWNSEND. Mr. McAdoo also urged here before the committee, as one of the reasons for Government control, that we had established a merchant marine—are building one that is going to be of great value to the country—and that by Government control that merchant marine could be operated in connection with the railroads to better advantage than it otherwise could be. Now, under the present law you have control over joint rates and rates in connection with inland waterways and railroads?

Commissioner CLARK. Yes.

Senator TOWNSEND. Is there any reason why a law could not be passed which would be effective, and practically giving the Interstate Commerce Commission power to coördinate the operation of the ships and the railroads?

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Commissioner CLARK. I assume that the Congress would have the right to place that duty or jurisdiction where it might deem wise. We have never entertained the idea that we would be given jurisdiction to determine the ocean rates of transportation. We have power now, under the Panama Canal Act, to prescribe preferential rates to the port on railroad traffic which is for water transportation beyond; but I do not think it has ever been suggested that we ought to have jurisdiction of the rates from our ports to the foreign countries by water.

Senator TOWNSEND. Assuming that he is correct—that it is desirable that there should be unified control of railroads and the ocean traffic, in our merchant marine, can you conceive of any obstacles that would lie in the way of giving the commission, or whatever body we might select, authority over the railroad and the ocean traffic?

Commissioner CLARK. No.

Senator LEWIS. Mr. Commissioner, I would like to ask you your judgment as to two things: first, sir, do the members of the Interstate Commerce Commission, so far as you have gathered, feel that with the passing of the roads into the hands of the Government, either for five years or as a permanent policy, the Interstate Commerce Commission would be abolished?

Commissioner CLARK. I have never heard one of them raise that question, Senator.

Senator LEWIS. Is it your judgment or not, sir, that

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their opinion as to whether we should take the roads over is at all influenced by the fact that the Interstate Commerce Commission would, in the natural course of things, be abolished?

Commissioner CLARK. I do not think any member of the commission has been influenced in the slightest by that thought.

Senator POINDEXTER. That would not necessarily follow, would it? That if the Government should take over the roads the Interstate Commerce Commission would be abolished?

Commissioner CLARK. We have not thought of it from that standpoint at all.

Senator POINDEXTER. No; but it is obvious, is it not, that that would not be the case?

[373] Senator CUMMINS. There would be a great deal more for them to do than ever before.

Senator LEWIS. The theory of the Interstate Commerce Commission now is to protect the people; that is, the Government as well as the roads, so as to have an equal and fair adjustment of rates. Now, if the Government were to take over the railroad properties itself, the Government would not have to have a separate agency to perform the duties now performed by the Interstate Commerce Commission; they would be performed by the officials of the Government, would they not?

Commissioner CLARK. They could be, Senator. I an-

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ticipate that if the Government owned the railroads, it would find that it had on its hands a great many complaints and controversies raised by the shippers throughout the country, and of course they could be left for determination to the executive officers of the railroad bureau or department, or whatever it was, or to some other tribunal, as Congress might deem wise.

Senator LEWIS. So no fear on the part of the members of the Interstate Commerce Commission of losing their places has entered into their attitude with regard to the Government taking over the railroads?

Commissioner CLARK. Absolutely not.

Senator LEWIS. I have seen it reported frequently, but I will take the commissioner's word for it.

Senator UNDERWOOD. If the examination is concluded, I would like to make a suggestion before we adjourn.

Senator GORE. I would like to ask the commissioner one or two questions. Mr. Clark, have you ever considered the advisability of requiring the railroads to own the merchant marine?

Commissioner CLARK. No, sir.

Senator GORE. Perhaps, in conjunction with the Government?

Commissioner CLARK. No, sir; we have never considered that. Our knowledge of the merchant marine is only that which the average citizen acquires by reading the

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newspapers, and we do not pretend to have any real knowledge of it.

Senator GORE. We have heard a lot about unifying the railroads of the United States. Of course, commerce is not merely national; it is largely international. It has occurred to me that if we would require the railroads to own the ships, we might in that way get a larger and more comprehensive utilization of the port facilities of the country.

Commissioner CLARK. I should say, Senator, that there is no room for contradiction of the statement that a close coördination of effort and unity of purpose as between our railroad transportation systems and our merchant marine, assuming that we are going to operate a merchant marine in foreign commerce, would go far toward expanding the commerce of this country, and would be of great benefit to the commercial interests of the country at large.

Senator GORE. I have particularly in mind the fact that New York Harbor is very often glutted with outgoing commerce, due to the desire on the part of the railroads to get the haul to New York over their lines. Now, if the railroads were serving all the ports, and were interested in the merchant marine, it would make no difference to them to which port the traffic might be hauled, and I think that in that way the commerce would

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be better distributed, and that it might relieve that congestion.

Commissioner CLARK. Senator, I am not willing, even by silence, to assent to the proposition that the congestion, of this foreign commerce at New York is entirely due to a desire on the part of the railroads to haul the traffic to that port. The shippers send their freight wherever they choose, over the open routes. The shipping interests on the Atlantic Ocean prefer to come to the port of New York.

Senator GORE. Yes.

Commissioner CLARK. And the shippers make their engagements with the ships for transportation to or from New York, and the railroad has but little election in that respect.

Senator GORE. Of course, that may be true, but that illustrates the point I had in mind, that if the merchant marine were controlled by the railroads, and they were a common interest, they might patronize other ports, and thus avoid this congestion?

Commissioner CLARK. I think that economy in the whole situation could be attained in times of heavy traffic by a more equitable distribution of the export movements through the various ports.

Senator GORE. Yes; that is what I had in mind.

Commissioner CLARK. Now, Mr. Chairman, I am through. I will just hand to the reporter a little memo-

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random of citations and quotations from reports of the commission to the Congress and others in which it has made expressions with regard to the necessity for the power to fix the minimum rate, which may be of some convenience to you.

The CHAIRMAN. We will be very glad to have it.

(The memorandum above referred to appears in full below, as follows:)

“Wrongs caused by improperly adjusted rates over independent lines from competing cities to a common destination can not be corrected without authority to prescribe both the maximum and minimum rate, and the commission is not empowered to do either. (*Savannah Bureau of Frt. & Trans. v. Charleston & S. R. Co.*, 7 I. C. C. 458; decided December 31, 1897.)

“The principle permitting the carrier to make low rates to meet competition has its limitations; it will not justify the making of rates which will not be remunerative, as that must result in throwing undue burdens upon others. (1 I. C. C. 227; 2 I. C. C. 231.)

“The Supreme Court has held that carriers in meeting competitive rates are not justified in carrying traffic for less than cost, since they would thereby impose upon non-competitive traffic the burden of the loss. (*Farmers, etc., Club v. A. T. & S. F. Ry. Co. et al.*, 12 I. C. C. 351.)

“The subject of minimum rates is first discussed at length in the commission's Seventh Annual Report

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(1893), on pages 38 and 39 of which will be found the following:

“ ‘The act confers upon the commission the power to reduce a rate that is unreasonably high, but not to raise a rate that is unreasonably low. Experience has fully satisfied us that this is a defect in the statute. It was doubtless thought that the interests of carriers who make rates would be sufficient assurance against unreasonably low rates, and it would not have been unnatural if legislators had gone further and said, at first blush, if carriers will not shield themselves against too low rates the fault is their own and they are entitled to no relief at the hands of the Government. This is plausible, and perhaps would be sound if railroads were operated directly by their owners in person and not by an army of agents, and if the evils resulting from unreasonably low rates did not disastrously affect business interests and the commerce of the country.

[375] “ ‘No fact is better established by experience, or more generally conceded by candid experts on the subject, than that the rule of the statute, viz, that rates should be just and reasonable and without preference, unjust discrimination or favoritism as between individuals, localities, or particular descriptions of traffic is the best for all interests concerned in transportation. The concession is practically universal; therefore, any practice of carriers that violates this rule must operate

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to the detriment of one or more of such interests. It is easy to see that an unreasonably low rate must injure the carrier by depriving it of revenue that the statute rule would give and which the carrier ought to have. This loss of revenue is, as a matter of course, equally bad for the stockholders. The unreasonably low rate never happens, as a rule, except in the case of traffic to competitive points. It is unrestricted competition that brings rates below what is just and reasonable. Revenue lost by the adoption of unreasonably low rates to competitive points can only be compensated for by rates above what is reasonable and just to noncompetitive points. These outnumber the competitive points very largely. Therefore, unreasonably low rates must always operate unjustly to a large proportion of traffic and a large class of shippers. In a word, the tendency of unjustly low rates to one point is in the direction of unreasonably high rates to others, thereby causing a distribution of the burdens of transportation which is unjust and in violation of the spirit and letter of the statute.

“ ‘Nearly every city in the country of any considerable size is both a commercial and a railroad center; therefore, a competitive point in both respects. The principal traffic to such points being under these competitive influences, without statutory restriction as to rates, they become unstable and radically varying, especially at times of rate wars between competitive carriers. Shippers

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mainly agree that unstable rates are injurious to business industries and to commerce generally. They claim that reasonable rates that are stable are better than sporadic low rates that are below what is just and reasonable. We are well satisfied by experience that the stability of just rates can never be assured without the sustaining aid of the law. The power to limit minimum rates to competitive points would tend strongly to promote stable rates.

“ ‘We can anticipate no opposition to such legislation, as its purpose and effect would be the protection of the interests and rights of the general public, as well as carriers, and without possible injury to the latter, and it is believed it would render the administration of the law easier and more successful.

“ ‘No more extended discussion of the necessities and advantages of conferring upon the commission the power and duty, under proper limitations, of prescribing minimum rates as well as maximum rates on traffic to competitive points is here submitted, because it will be found in Appendix D to this report. We, without hesitation or doubt, recommend an amendment embodying the proposition’

“ ‘On page 78 of the same report the commission recommends ‘that the power be conferred on the commission to prescribe minimum as well as maximum rates to competitive points.’ The same recommendation is repeated

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in the Eighth Annual Report (1894), page 78. In the Eleventh Annual Report (1897), page 143, it is recommended that the commission should have power 'to fix both a maximum and minimum rate when that may be necessary to prevent discriminations under the third section.' In the Twelfth Annual Report (1898), page 26, the commission remarks, after citing various cases, that:

“‘These cases fully support what was in substance said by the commission in its last report—that without authority to determine and order a maximum rate after due hearing and investigation the commission can not execute the provision in the first section of the law requiring reasonable rates, nor the just relations of rates which are required under the first and third sections; and that the power to prescribe a minimum as well as a maximum rate is necessary to enforce the prohibition against undue preference as between localities in cases where the places involved are not served by the same line.’

“‘The National Convention of Railroad Commissioners in their report for 1899 voted unanimously to recommend the immediate passage by Congress of such laws as will effectually suppress the transportation evils and abuses described in the various annual reports of the Interstate Commerce Commission. The above association at its convention in 1901 resolved that the Interstate Commerce Commission be clothed with power and authority to

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fix minimum, maximum, and differential charges. The text of the resolution is set out in full on page 82 of the commission's Fifteenth Annual Report (1901).

[376] "The following quotations are taken from the commission's reports as indicated:

"There are two ways in which this discrimination might be removed. First, the rate upon the bags might be reduced, but it would be unjust to compel these defendants to receive less than a reasonable charge for the transportation of that commodity. Second, the rates on the burlaps might be advanced, but the commission has no authority to prescribe a minimum rate. (*Percy Kent Co. v. N. Y. C. & H. R. R. Co.*, 15 I. C. C. 439, 442.)'

"If we were authorized to fix a minimum rate, or to treat the carriers collectively as a single unit or system, the adjustment complained of is one which might call for correction. (*Roberts Cotton Oil Co. v. I. C. R. R. Co.*, 21 I. C. C. 248, 251.)'

"If all the carriers serving the competitive fields in West Virginia, Ohio, and Pennsylvania were before the commission, it might be possible for us to establish proper differentials on the basis of full testimony. All these carriers, however, are not before the commission; but even if they were, the commission would still be powerless to prescribe a minimum rate, without which a fixed relation among these different fields hardly can be enforced. It is well known that Congress has not yet

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seen fit to grant this power to the commission. Again, assuming that the commission were to establish a maximum rate from Pittsburgh to Ashtabula Harbor of less than 78 cents, and that in addition we were to establish the differential between the Pittsburgh and all the other fields, this Pittsburgh rate would be virtually an absolute rate, and the establishment of rates from the other districts through the instrumentality of the differential likewise would be the establishment of a specific rate from those districts. Therefore the commission, by indirection, would establish absolute rates from all these districts on lake-cargo coal. Efficiency and equity in regulation alike require it; nevertheless, Congress has not yet granted such power. (*Boileau v. P. & L. E. R. R. Co.*, 24 I. C. C. 129, 133.)'

“ ‘If the carriers which reach Memphis, and are parties to the 22-cent rate to St. Louis, were required to withdraw from participation in the 22-cent rate to St. Louis, so long as they maintain a rate in excess of 25 cents to Memphis, it would simply mean that the other lines reaching St. Louis would obtain more of the traffic to that point with less competition. It can not be said, therefore, that the maintenance of the 22-cent rate to St. Louis is the voluntary act of the defendants which reach Memphis. If we were authorized to fix a minimum rate, or to treat the carriers collectively, as a single unit or system, the adjustment complained of is one which might call for cor-

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rection. (*Memphis Freight Bureau v. B. & O. R. R. Co.*, 28 I. C. C. 543, 547.)'

“‘The allegation that rates paid by complainants’ competitors are “unreasonably low” and “should be corrected by an increase,” while showing plainly the nature of the case before us, does not present an issue within the scope of the act upon which the commission could make an order, unless the relation of rates attacked results in such discrimination or preference as the act condemns. (*Anson, Gilkey & Hurd Co. v. S. P. Co.*, 33 I. C. C. 332, 334.)’”

Commissioner CLARK. In conclusion, I want to say that I read at the opening of my statement a memorandum which was assented to by all of the commissioners, except as it was departed from in a separate memorandum by Commissioner Woolley, which I also read. I was delegated to come here and present that for the commission, and, of course, I was authorized by the commission to support for the whole commission any statement contained, or any principle outlined in that paper. This examination has taken a rather wide range and, I have been called upon to answer off-hand a good many questions; and I think it is only fair to say that in the matters of detail my colleagues may differ with me, and are not to be held bound by answers that I have made, which go beyond the expressions which are contained in the paper which I was authorized to submit for the whole.

Senator UNDERWOOD. Mr. Chairman, some time ago a

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joint committee of the two Houses was appointed under what was known as the "Newlands resolution," and took a great deal of testimony. Much [377] of that testimony is pertinent to the inquiry here, and along the same lines, and is likely to be repeated, if it is not made a part of this record here. I wish to ask that that testimony taken before the Newlands committee be printed as an appendix to this hearing, and indexed with it.

The CHAIRMAN. Without objection, that will be done. I would like to have an executive session, now, and, Commissioner Clark being through, all others than members of the committee will retire from the room.

Mr. THOM. Before you go into executive session, I wish to say that, at very considerable expense, we have had a compilation or a synopsis—and by very competent hands—of the laws of all the States in respect to corporations, and their conflict of regulation, etc. It is quite voluminous, and it might be of sufficient value for this committee to order it to be printed. Would it be possible for you to appoint a subcommittee to look into that, and to determine the question whether it is sufficiently of public interest to have it printed?

The CHAIRMAN. I will take that up with the committee, and let you know later.

(Whereupon, at 12:25 o'clock p .m., the committee went into executive session; and later adjourned until Monday, January 13, 1919, at 10 o'clock a. m.)

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POMERENE-ESCH BILL.

65TH CONGRESS,
3D SESSION.

S. 5398.

IN THE SENATE OF THE UNITED STATES.

January 20 (calendar day, January 21), 1919.

Mr. Pomerene introduced the following bill; which was
read twice and referred to the Committee on
Interstate Commerce.

65TH CONGRESS,
3D SESSION.

H. R. 14820.

IN THE HOUSE OF REPRESENTATIVES.

January 21, 1919.

Mr. Esch introduced the following bill; which was re-
ferred to the Committee on Interstate and For-
eign Commerce and ordered to be printed.

A BILL

To amend an act entitled "An Act to regulate commerce,
approved February fourth, eighteen hundred and
eighty-seven, and all acts amendatory thereof, and to
enlarge the powers of the Interstate Commerce Com-
mission, approved June twenty-ninth, nineteen hundred
and six."

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That that portion of section one of the act to regulate commerce, preceding the first proviso, as amended by June twenty-ninth, nineteen hundred and six, April thirteenth, nineteen hundred and eight, and June eighteenth, nineteen hundred and ten, be amended to read as follows:

“That the provisions of this Act shall apply to any corporation, or any person or persons, engaged in the transportation of oil or other commodity (except water and except natural or artificial gas) by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or district of the United States to any other State, Territory, or district of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad and wholly by boat between points on the rivers and lakes of the United States, and by water between points on the seacoasts of the United States, and to such carriage of persons and property partly by railroad and partly by water, whether or not both are used under a common

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control, management, or arrangement for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.”

SEC. 2. That hereafter, in reaching its conclusion as to the reasonableness of any rate, fare, charge, classification, regulation, or practice, the commission shall take into consideration the increased cost of labor and other operating costs, in so far as they become material, in any case under investigation.

SEC. 3. That the amendment to section one by the act approved May twenty-ninth, nineteen hundred and seventeen, is hereby amended to read as follows:

“The term ‘car service’ as used in this act shall include the movement, distribution, exchange, interchange, and

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return of cars used in the transportation of property by any carrier subject to the provisions of this act.

“It shall be the duty of every such carrier to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service, and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

“The Interstate Commerce Commission is hereby authorized, by general or special orders, to require all carriers subject to the provisions of the act, or any of them, to file with it from time to time their rules and regulations with respect to car service; and the commission may, in its discretion, direct that the said rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation, and be subject to any or all of the provisions of the act relating thereto.

“The commission shall, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars and train service and operation, compensation to be paid for the use of any car not owned by any such common carrier, and the penalties or other sanctions for nonobservance of such rules.

“Whenever the commission shall be of opinion that

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necessity exists for immediate action with respect to the supply or use of cars for transportation of property, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the commission may determine, to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the commission, and also authority to make such just and reasonable directions with respect to car service during such time as in its opinion will best promote car service in the interest of the public and the commerce of the people; and the commission is hereby authorized and directed to require carriers to interchange and use all engines, cars, and other facilities owned or used by them in such manner as shall best serve the public interest in times of shortage of equipment in any section of the country, upon just and reasonable terms as between the carriers as the commission may prescribe; and the commission is hereby authorized and directed to provide by order for the use, in the public interest, of all terminals of carriers, upon such terms as between the carriers as the commission may find just and reasonable.

“The directions of the commission as to car service

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may be made through and by such agents or agencies as the commission shall designate and appoint for that purpose.

“In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with any direction or order with respect to car or train service, such carrier, receiver or trustee shall be liable to a penalty of not less than \$100 nor more than \$500 for each such offense and \$50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.”

SEC. 4. That to the first paragraph of section five of the act to regulate commerce, as amended August twenty-fourth, nineteen hundred and twelve, the following proviso be added:

“*Provided*, That the Interstate Commerce Commission may, and it is hereby authorized, from time to time, upon application by carriers, or others, or upon its own initiative without such application, to permit, upon order, the pooling of traffic and facilities and the consolidation of two or more carriers subject to the provisions of this act, under such rules and regulations and under such terms as shall be just and reasonable, as in its opinion shall conduce to the public good; which authorized and ordered arrangement shall continue so long as in the

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judgment of the commission the public interest may require."

SEC. 5. That the first paragraph of section fifteen of the act to regulate commerce, as amended June twenty-ninth, nineteen hundred and six, and June eighteenth, nineteen hundred and ten, be amended by adding the following:

"Provided, That the commission may in case it finds such action just and reasonable prescribe the minimum rate, fare, or charge to be published and maintained by carriers."

SEC 6. That the second paragraph of section fifteen of the act to regulate commerce be amended so as to read as follows:

"Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual joint classification, or any new individual or joint regulation or practice, affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice, and pending such hearing and the decision thereon the commission upon filing with such schedule

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and delivery to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than ninety days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect the commission may make such order as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period. Should the commission finally find and conclude that any rate, fare, charge, classification, regulation, or practice which under the circumstances hereinbefore stated, is unreasonable, unduly prejudicial, or unjustly discriminatory, or otherwise in violation of any of the provisions of the act to regulate commerce, they shall upon proof of shipments, under such regulations as they may prescribe, award reparation to shippers based upon the difference in charges under the rates initiated by the carrier and those found reasonable by the commission."

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SEC. 7. That hereafter when there shall be filed with the Interstate Commerce Commission any complaint against interstate rates, fares, charges, classifications, regulations, or practices, or when an investigation thereof may be undertaken by the commission on its own motion which affects rates, fares, charges, classifications, regulations, or practices applicable wholly within any State of the United States, which may or may not have been prescribed by State authority, the commission shall cause notice to be given to the railroad commission or public service or utilities commission, or other appropriate authority of such State. The railroad commission, public service or utilities commission, or other State authority thus notified, shall have the right to be represented at, and such representative shall have the right to sit with the commission or its representative at such hearing and shall have the right to present or cause to be presented to the commission such evidence as they may deem necessary, just, and proper to conserve the rights and interests of their people and States; they shall also have the right to file briefs and be heard on argument and the circumstances and conditions they present shall be considered and given due weight by the Interstate Commerce Commission in arriving at its conclusion.

Hereafter when any case brought to the attention of the Interstate Commerce Commission by formal complaint or otherwise involves or presents a question of con-

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flict of jurisdiction between Federal authority over any matter or thing and the authority of any State or States of the United States over the same matter or thing, the Interstate Commerce Commission is hereby authorized to notify the state commissions, utilities commission, or other State authority, and may coöperate with such State authority with a view to harmonizing any such conflict of authority; and the Interstate Commerce Commission is hereby authorized in any proper case to utilize the services, records, and other facilities of the State commissions, utilities commissions, or other State authorities to such an extent as shall in their opinion be proper and helpful in determining the matters and things presented.

SEC. 8. That section twenty of the act to regulate commerce as amended June twenty-ninth, nineteen hundred and six; February twenty-fifth, nineteen hundred and nine; June eighteenth, nineteen hundred and ten; March fourteenth nineteen hundred and fifteen; and August ninth, nineteen hundred and sixteen, be amended by inserting therein a new section to be designated twenty A, to be placed after section twenty and before section twenty-one, to read as follows:

“SEC. 20A. That from and after the passage hereof it shall be unlawful for any common carrier subject to the act to regulate commerce, as amended, to issue any capital stock or certificate of stock, or any bond or other evidence of interest in or indebtedness of the carrier (herein-

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after collectively termed 'securities'), or to assume any obligation or liability as lessor of another carrier, or as lessee, guarantor, surety, or otherwise in respect of the securities of any other person, natural or artificial, if connected with or relating to that part of the business of such carrier governed by the act to regulate commerce as amended, even though permitted by the authority creating the carrier corporation.

“(a) Unless it be for some person within its corporate powers and in the public interest, necessary or appropriate to the proper performance of its service for the public, and not tending to impair the financial ability of the carrier to discharge its duty to the public; and

“(b) Unless and until, and then only to the extent that, upon application by the carrier and after investigation by the commission of the purposes and uses of the issue of securities and the proceeds thereof, such issue is approved by order of the commission as reasonable, necessary, or appropriate.

“(c) The commission may from time to time, for good cause shown, make such supplemental order or orders in the premises as it may deem necessary, and may by any such supplemental order modify the provision of any previous order or orders as to the particular purposes, uses, and extent to which, or the conditions under which any securities so theretofore authorized, or the proceeds thereof, may be applied.

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“(d) Each such application shall be made in such form as the commission may from time to time determine and prescribe, and shall set forth such matters as the commission may require, including the total amount of the proposed issue, and how authorized by or on behalf of the carrier; the number and amount of all its securities outstanding at any time prior to said date, the amount thereof undisposed of, and whether such amount is held in the treasury of the corporation as free assets, or is pledged, and if pledged, the terms and conditions of such pledge; the number and amount of securities then to be issued, and whether to be sold, pledged, or held in the treasury of the corporation as a free asset, or otherwise disposed of or applied, as the case may be, specifying number and amount in each case; if any such securities are to be sold, the terms and conditions of sale; if any part of the consideration to be received therefor is other than money, an accurate and detailed description of such consideration; if any such securities are to be pledged, the terms and conditions of pledge; or if other disposition or application is to be made, a full and detailed explanation thereof; the number and amount of its securities so authorized but not then to be issued; if the issue is of shares of stock, the number thereof, the face or par value, if any, specifying whether common or preferred, and the number and kinds of then outstanding shares previously issued; the preferences or privileges granted

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to the holders of any such securities; the dates of maturity, rates of interest, or fixed dividend, whether cumulative or not, and any conversion rights granted to the holders thereof, and the price, if any, at which any such securities may be retired or redeemed; the purposes to which the proceeds of the issue are to be devoted in such detail as the commission may require; in case of proposed assumption of any obligation or liability in respect of the securities of any other person, natural or artificial, like showing shall be made as to the financial condition of said other person, as also of the objects sought and benefits to be realized by the carrier from such assumption to be accompanied by copies of any agreements or contracts therefor.

“Every application for authority, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice-president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

“Whenever any securities set forth and described in any application for authority, or certificate or notification as pledged or held as a free asset in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within

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ten days after such sale, pledge, or repledge, or other disposition, file a certificate of notification to that effect, setting forth all such facts as are required herein or as may be required by the commission.

“Upon application to the commission for approval of proposed issues of securities, the commission shall cause notice to be given to the railroad commission or public service or utilities commission, or other appropriate authority of each state in which the applicant carrier operates. The railroad commission, public service or utilities commission, or other appropriate State authority thus notified shall have the right to present before the commission such representations as they may deem just and proper for preserving and conserving the rights and interests of their people and the States, respectively, as involved in such proceeding. The commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

“Nothing herein shall be construed to imply upon the part of the United States or the commission any guaranty or obligation as to such issues or as to their value, and all decisions, orders, and authorities by the commission shall so state.

“The foregoing provisions of this section shall not apply to notes to be issued by any said carrier maturing not more than two years after the date thereof and aggregating not more than five per centum at any time of the

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securities of the carrier outstanding. Within ten days after the date of such notes the carrier issuing the same shall file with the commission a certificate of notification in such form as may from time to time be determined and prescribed by the commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities.

“The commission shall require periodical or special reports from all carriers hereafter issuing any securities, including such notes, which shall show, in such detail as the commission may require, the disposition made of such securities and the application of the proceeds thereof.

“All issues of securities contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Interstate Commerce Commission, or of any director, officer, or stock-holder of the carrier proposing to make the issue; and any director, officer, attorney, or agent of such corporation who assents to, or concurs in, any issue or securities forbidden by this section, or any sale or other disposition of securities contrary to the provisions of order or orders of the Interstate Commerce Commission, or any application not authorized by the commission of the funds derived by the said carrier through such sale or other disposition of said securities shall upon conviction be punished by a fine of not less than \$1,000 nor more than \$10,000, or imprisonment for a term of not less than

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one year nor more than three years, or both such fine and imprisonment in the discretion of the court.”

SEC. 9. That without first having obtained the approval of the Interstate Commerce Commission no carrier subject to the provisions of the act to regulate commerce, as amended, after the approval hereof, shall begin the construction of a railroad or any extension thereof. The Interstate Commerce Commission is hereby authorized and empowered to issue a certificate of public convenience and necessity which shall constitute its approval of such construction of a new railroad or the extension of an old one, requiring the expenditure of new capital. The commission is empowered and is hereby required to inquire into proposed expenditures for the purposes above described, and its certificate of approval shall not be issued until it shall have been satisfied, upon full hearing or otherwise, that the new railroad or the extension of a railroad as proposed is in the public interest and is a feasible and necessary extension of the transportation facilities of the country. In deliberations on this matter, whether by public hearings or otherwise, the commission shall cause notice to be given to the railroad commission or public service or utilities commission or other appropriate authority of each State in which the proposed road is to operate, or the proposed extension to be built, with the right to be heard as heretofore provided in this section with respect of issues of securities.

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(Arabic numerals indicate pages at which statements appear in Testimony of Edgar E. Clark.)

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